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UNITED STATES-CANADA FREE TRADE AGREEMENT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON TRADE

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

FEBRUARY 9, 26, 29; MARCH 1, 11, 25, 1988

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UNITED STATES-CANADA FREE TRADE AGREEMENT

TUESDAY, FEBRUARY 9, 1988

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:07 p.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

[The press releases announcing the hearings follow:]

FOR IMMEDIATE RELEASE
TUESDAY, JANUARY 26, 1988

SUBCOMMITTEE ON TRADE #15
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3625

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES PUBLIC HEARINGS ON THE UNITED STATES-CANADA FREE TRADE AGREEMENT

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced that hearings on the proposed free trade agreement between the United States and Canada, and its implementation, will begin on Tuesday, February 9, 1988. The hearing will be held in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 2:00 p.m. Members of the full Committee on Ways and Means are also invited to participate in the hearings.

The Honorable James A. Baker III, Secretary of the Treasury, and the Honorable Clayton Yeutter, U.S. Trade Representative, will be the lead-off witnesses on February 9. Additional hearings will be held by the Subcommittee to receive testimony from invited and other interested witnesses from the private sector representing business, labor, and others affected by the proposed agreement. A subsequent press release will announce the dates and location of these hearings.

On January 2, 1988, President Reagan and Prime Minister Mulroney signed the final text of a comprehensive agreement to establish a free trade arrangement between the United States and Canada that, if approved and implemented by the legislatures of both countries, would take effect on January 1, 1989. Section 102 of the Trade Act of 1974 authorizes the President to enter into bilateral trade agreements, subject to Congressional approval under a special "fast track" procedure to implement legislation making necessary and appropriate changes in U.S. law. Under this procedure, the Congress will have a maximum 90 legislative days to consider implementing legislation following submission by the President of the agreement, a draft bill, and a statement of proposed administrative action. The purpose of these hearings is to receive public views on whether the agreement should be approved and issues that should be addressed in implementation.

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Requests to be heard must be made by telephone to Harriett Lawler [telephone (202) 225-1721] by close of business Monday, February 8, 1988. The telephone request should be followed by a formal written request to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515. The Subcommittee staff will notify by telephone those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee office [(202) 225-3943].

In view of the limited time available to hear witnesses, the Subcommittee may not be able to accommodate all requests to be heard. Those persons and organizations not scheduled for an oral appearance are encouraged to submit written statements for the record of the hearing. All persons requesting to be heard, whether they are scheduled for oral testimony or not, will be notified as soon as possible after the filing deadline.

Witnesses scheduled to present oral testimony are requested to briefly summarize their written statements. The full statement will be included in the printed record.

In order to assure the most productive use of the limited amount of time available to question hearing witnesses, witnesses scheduled to appear before the Subcommittee are required to submit 150 copies of their prepared statements to the Subcommittee on Trade office, room 1136 Longworth House Office Building, at least 24 hours in advance of their scheduled appearances. Failure to do so may result in the witness being denied the opportunity to testify in person.

WRITTEN STATEMENTS IN LIEU OF PERSONAL APPEARANCE:

Persons submitting a written statement in lieu of a personal appearance should submit six (6) copies of their statements by the close of business Friday, February 26, 1988, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, Room 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing a written statement for the record of the printed hearings wish to have their statements distributed to the press and the interested public at the hearings, they may provide 75 additional copies for this purpose to the Subcommittee office, room 1136 Longworth House Office Building, prior to the start of the public hearings.

SEE FORMATTING REQUIREMENTS BELOW:

COMMITTEE ON WAYS AND MEANS FORMATTING REQUIREMENTS FOR PRINTING OF HEARING STATEMENTS, WRITTEN COMMENTS AND EXHIBITS

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will **not** be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

* * * * * * * * * * *

FOR IMMEDIATE RELEASE
WEDNESDAY, FEBRUARY 10, 1988

SUBCOMMITTEE ON TRADE #16
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3625

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES CONTINUATION OF HEARINGS ON THE UNITED STATES-CANADA FREE TRADE AGREEMENT

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced the continuation of hearings to receive testimony on the United States-Canada Free Trade Agreement, as previously announced in Subcommittee press release #15, dated January 26, 1988.

The hearings will continue, in the main Committee hearing room, 1100 Longworth House Office Building, according to the following schedule:

Date	Time
Friday, February 26, 1988	9:30 a.m.
Monday, February 29, 1988	2:00 p.m.
Tuesday, March 1, 1988	2:00 p.m.

Testimony will be received from invited witnesses only, based on requests to be heard which have already been submitted to the Committee.

Additionally, the Subcommittee will hold a field hearing in Fargo, North Dakota, on Friday, March 11, 1988, beginning at 9:00 a.m., at a location to be determined.

All other details for these additional hearing days are the same as announced previously in Subcommittee press release #15; however, the deadline for submission of written statements for the record is extended to Friday, March 18, 1988.

* * * * * * * * * * * *

FOR IMMEDIATE RELEASE
TUESDAY, MARCH 8, 1988

SUBCOMMITTEE ON TRADE #17
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1102 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-3625

THE HONORABLE SAM M. GIBBONS (D., FLA.), CHAIRMAN, SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES AN ADDITIONAL DAY OF HEARINGS ON THE UNITED STATES-CANADA FREE TRADE AGREEMENT

The Honorable Sam M. Gibbons (D., Fla.), Chairman of the Subcommittee on Trade, Committee on Ways and Means, U.S. House of Representatives, today announced that the Subcommittee will hold an additional day of hearings on the United States-Canada Free Trade Agreement. These hearings were previously announced in Subcommittee press releases #15 and #16.

The additional day of hearings will be on Friday, March 25, 1988. The hearing will be held in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 9:30 a.m.

Testimony will be received from Members of Congress only.

* * * * * * * * * *

Chairman GIBBONS. Good afternoon, ladies and gentlemen.

Let me say, first of all, I want to welcome each one of you here to this meeting of the Subcommittee on Trade of the Committee on Ways and Means. All members have been invited, not only members of the Trade Subcommittee, but members of the full committee.

This is a historic occasion. We begin today the process of considering the trade agreement that has been negotiated between the administration and the Government of Canada, the two largest trading partners on Earth, the two best friends on earth. We want to consider this matter with that in mind.

The role of the Congress is important in this because unless the Congress agrees with the agreement, the agreement is naught. I, as one, hope the Congress will agree with this agreement and will signify it early so that the Canadians will feel it urgent and freer to go ahead with their part of the agreement and to begin their ratification process.

I hope that all members will fully participate in this because our Constitution is far different than the constitution of any other country on Earth. For the purpose of considering agreements like this, we adopt something called a fast track. It is not a very good name for a very complicated process but, in effect, it means that we either have to accept or reject without substantive amendment the legislation implementing the handiwork of the administration.

This agreement, like most agreements of this size and proportion, does not do everything. But in my opinion, it does enough so that Congress should ratify it. I think it is a fair agreement. It is not a one-sided agreement and I hope that there can be searching questions today about things that perhaps should have been included in this agreement that perhaps can be the order of business for some time in the future.

We have with us today, Ambassador Yeutter and Secretary Baker and, before I call on them, I want to first call on our distinguished chairman of the full Ways and Means Committee. I want to tell him you do not know what a pleasure it is to have a real chairman, Mr. Rostenkowski, around here when you are just the chairman of a little subcommittee. I realize it is only by your grace that I am sitting here in this chair today. I want you to know it is a pleasure to work with you and if you have got something to say, I would like to hear from you now.

Chairman ROSTENKOWSKI. Thank you, Mr. Chairman.

Mr. Secretary, Ambassador Yeutter, let me, along with my subcommittee chairman, Sam Gibbons and the rest of the members of the Subcommittee on Trade of the Committee on Ways and Means, welcome you here today to open these hearings on the United States-Canada Free Trade Agreement.

I want you gentleman to understand that I come into this process with an open mind. I am prepared to examine this agreement, listen to all sides in these hearings, and then decide what position I think the Congress should take. If this committee concludes that the agreement is in the overall national interest of the United States, then I feel certain that you will receive the support of this subcommittee and the full Committee on Ways and Means.

I would like to point out, however, that the process for drafting and enacting the enabling, implementing legislation for trade agreements is certainly a unique one. It requires close cooperation between the Congress and the administration. And it requires us to meet each other halfway.

This, I am sure you will agree, is a complicated agreement between two countries that, together, comprise the largest trading relationship in the world. It took over 2 years to negotiate. It is going to take us a little time to work out the implementing bill.

I know, Mr. Ambassador and Mr. Secretary, the leadership in Congress has been discussing with you a suitable arrangement regarding the timetable for congressional action. I hope that a timetable satisfactory to both of us can be worked out so that the Congress can look forward to acting on this important legislation this year.

Thank you, Mr. Chairman.

Chairman GIBBONS. Thank you, Mr. Chairman.

Mr. Crane, would you like a turn?

Mr. CRANE. Thank you, Mr. Chairman, and I simply want to welcome our two distinguished guests today and to applaud your initiatives in negotiating this treaty. It is, indeed, historic and at a time when at least incipient protectionism seems to be on the rise.

I think this initiative goes in a considerable direction toward what, at least I know you gentlemen favor, and that is liberalization of trade rather than constriction of it. I think, also, it is a long overdue initiative, in as much as we have always had an open border with our Canadian neighbors and probably, if you are going to find anyone who is close to the United States, it has to be our Canadian neighbors.

I simply want to wish you well in your negotiations. I know that there are some who are going to say that it does not get implemented fast enough, and there are others who are just generally in opposition to the concept. But I think it enjoys wide support by Members of Congress and I am happy that the administration is aggressively pushing it.

We look forward to your testimony and I welcome you here.

Chairman GIBBONS. I detected that the other members would prefer that we start with the witnesses now and so, Secretary Baker——

Mr. SCHULZE. Mr. Chairman, if I may, I would like to ask unanimous consent that a statement by John Duncan, who is unavoidably detained, be placed in the record at this point.

Chairman GIBBONS. Without objection, it is so ordered.

[The statement of Mr. Duncan follows:]

STATEMENT BY HON. JOHN DUNCAN

I join my colleagues in welcoming Secretary Baker and Ambassador Yeutter to this first in a series of public hearings on the historic agreement between the United States and Canada to establish the world's largest free trade area.

Negotiators for both sides have engaged in intensive and sometimes difficult discussions for almost two years. Now they have presented us with a document that reveals a many-sided agreement which addresses a broad range of bilateral issues including tariffs, investments, services, technology, natural resources, customs matters, cultural matters, subsidies, agriculture and dispute settlements. The centerpiece of the agreement is that about half of all tariffs between the two countries will be eliminated in 5 years and the remainder by the 10th year.

Now the work of the Congress begins. We must independently evaluate the terms of the agreement and decide whether, with its breakthrough successes and worrisome imperfections alike, we have an agreement that will be in the overall economic interest of the United States, its industries, workers and consumers. More importantly, the Congress must craft implementing legislation that will ensure the agreement's full potential while providing a smooth transition for affected sectors of our economy. The Canadians will undergo their own process of approval and implementation of the agreement.

This agreement and how we incorporate it into U.S. law will set the stage for even more significant multilateral negotiations in the Uruguay round over the next few years. The contribution to the multilateral process that can be made by this agreement between the world's two largest trading partners is truly enormous. Just as significant is its implementation by Congress. Although we are faced with a typically busy election year, I hope that we can resolve the problems that arise as we study the agreement, fairly easily. Then we can look upon approval of this historic agreement, along with completion of an effective omnibus trade bill, as the greatest achievements of the 100th Congress.

We should not ignore the difficulties this agreement creates for some sectors of the economy nor the disappointments of some groups that the agreement fell far short of what could have been achieved. We must face the shortcomings of this agreement realistically. Perhaps there are opportunities in the implementation process to improve the agreement and smooth the transition to more cooperative, open bilateral trade.

Mr. Secretary, I read with interest your article in the January issue of The International Economy where you label this agreement one that could serve as "the catalyst, at home and abroad, for a new trade policy strategy". You also stated that "if all nations are not ready" to aggressively pursue negotiated trade liberalization "we will begin with those that are and build on that success." I agree with a pragmatic approach to trade expansion and to the elimination of unfair trade practices.

Again, I welcome you both and look forward to hearing your important testimony.

Chairman GIBBONS. Secretary Baker.

STATEMENT OF HON. JAMES A. BAKER III, SECRETARY OF THE TREASURY

Secretary BAKER. Thank you, Mr. Chairman.

I am pleased to have the opportunity to speak with you today about this historic free trade agreement which was signed by the President and Canadian Prime Minister Mulroney on January 2.

My opening statement will be very brief. In particular, I would like to describe its merits and urge this committee's approval of the agreement.

First, perhaps I should speak to the chairman's comments about working out a satisfactory timetable for a vote this year. Let me say that both Ambassador Yeutter and I look forward to continuing to work with the chairman of this committee, the chairman of the Senate Finance Committee and the leadership of the Congress on arrangements for a satisfactory timetable, so that there can indeed be a vote this year.

Let me also say that we are very cognizant of the importance of close consultations with the Congress during the period preceding that vote.

The United States and Canada, Mr. Chairman, have a rare opportunity to strengthen our special relationship and to reduce substantially barriers to bilateral trade and the barriers to investment. If we rise to the occasion, we will leave a lasting legacy for future generations. If we do not rise to the occasion, we will have no other opportunity to conclude such an agreement for years to come. It is our strongly held view that we simply cannot afford to let this opportunity slip away.

The agreement dramatically reduces barriers and establishes rules of conduct for a broad range of economic activities. As a result, it will mean greater investment opportunities for investors, larger markets and increased plant efficiency for producers, higher paying jobs for workers and lower priced but higher quality goods for consumers.

This is true, Mr. Chairman, for Americans and it is true for Canadians. Thus, by opening our markets, our economies will prosper and our goods will become more competitive internationally.

Mr. Chairman, let me address the three major reasons why I believe that in the broader context this agreement is in the overall national interest. First, this agreement can and should strengthen not only the GATT, but the entire world trading system. The Uruguay round is an important but long range effort at trade liberalization. In the meantime, the free trade agreement reflects productive government activism that invigorates the historical congressional notion of free trade, should reawaken businesses and consumers to the gains of open trade, and presents a possible basis for arrangements with other countries.

Second, the free trade agreement breaks new ground by defining rules in the area of services, investment, and technology, while respecting national sovereignty. The accord includes the U.S. first bilateral agreement covering the financial services sector and recognizes the close link between trade and investment in the modern world. This breakthrough should provide the basis for GATT provisions in these areas and offer the means by which our two countries can, in the future, negotiate on emerging issues.

Third, this agreement is part of a trade policy strategy that should reassure other nations that recognize the value of a more open-world economy. This strategy is also consistent with domestic political imperatives. Pressure to adjust U.S. trade policy should not take a negative, unilateral form.

Trade liberalization is achievable, and we will prosper from it. We can demonstrate a hard-nosed Yankee trader realism about bargaining. If all nations are not ready, we will begin with those that are and we will build on that success.

By demonstrating that a bilateral free trade area is a viable option, we can give the next administration an opportunity to set trade policy on a creative, positive, and pragmatic international course. Such an occurrence would be in the best traditions of this committee.

In conclusion, I would like to commend Chairman Rostenkowski, yourself, and the committee staff, Mr. Chairman, for the timeliness of today's hearing. By starting the process for approving the agreement and enacting enabling legislation this early in the congressional session, we will have ample time to work together in a truly bipartisan effort to fashion and achieve our goal by creating the largest geographical free trade zone in the world.

Thank you, Mr. Chairman.

[The statement of Secretary Baker follows:]

Statement of Secretary James A. Baker, III
Before The Subcommittee on Trade
Of the Committee on Ways and Means
U. S. House of Representatives
February 9, 1988

I am pleased to have the opportunity to speak to you today about the historic Free Trade Agreement signed by President Reagan and Canadian Prime Minister Mulroney on January 2. In particular, I would like to describe its merits and to urge your approval of this agreement.

For over a century, the United States and Canada have periodically discussed forming a special trading relationship. But our two nations seemed to take turns finding narrow interests or specious fears that prompted us to turn back. The moment was never ripe for both nations at the same time.

The United States and Canada now have a rare opportunity to strengthen our special trading relationship and to reduce substantially barriers to bilateral trade and investment. It makes geopolitical sense and common sense. As developed countries with similar industrial structures and economic concerns, we will both benefit from bilateral trade liberalization and our other trading partners around the world will benefit from our increased prosperity.

If we rise to the occasion, we will leave a lasting legacy for future generations. If we do not rise to the occasion, we will have no other opportunity to conclude such an agreement for years to come. We should not let this opportunity slip away.

In 1985, Prime Minister Mulroney courageously proposed that U.S. and Canadian trade officials examine the potential for a free trade agreement. After notifying this Committee and the Senate Finance Committee, negotiations were begun in 1986. After lengthy negotiations, and after reviewing the useful advice of a number of members of this Committee, we reached an agreement that establishes the world's largest free-trade area.

The agreement dramatically reduces barriers and establishes rules of conduct for a broad range of economic activities. As a result, it will mean greater investment opportunities for investors, larger markets and increased plant efficiency for producers, higher-paying jobs for workers and lower-priced but higher-quality goods for consumers. This is true for Americans and Canadians. Thus, by opening our markets, our economies will prosper and our goods will become more competitive internationally.

The FTA eliminates all tariffs on U.S. and Canadian products. This is in itself a major accomplishment. It will benefit many U.S. businesses, which face Canadian tariffs twice as high as U.S. tariffs. The agreement also substantially reduces other barriers between our two countries. Furthermore, it indicates where future work is needed and sets up a mechanism for achieving further liberalization. One of the greatest accomplishments of the FTA is that it will establish this process for future work and will promote U.S.-Canadian cooperation.

The Administration wants to work with Congress to develop legislation implementing this agreement. We are bringing to you a good agreement that improves the trading environment between the United States and Canada. Now we need to develop the domestic mechanism to see that the agreement works, that governmental practices are consistent with the agreement, and that the process of trade liberalization between the United States and Canada continues.

Mr. Chairman, let me address the three major reasons why I believe, in the broader context, that this agreement is in the Nation's interest.

1. The Political Economy Context

   This agreement can and should strengthen not only the GATT, but the entire world trading system and, in the process, give impetus to all regimes of free trade which are complementary to the GATT. We know the Uruguay Round is an important, but long-range effort at trade liberalization. In the meantime, the FTA reflects productive government activism that should invigorate the historical congressional notion of free trade, reawaken businesses and consumers to the gains of open trade, and present a possible basis for arrangements with other countries.

2. The FTA Breaks New Ground

   The FTA reduces a number of existing quantitative barriers and creates the opportunity to reduce others. It also breaks new ground by defining rules in the areas of services, investment, and technology, while respecting national sovereignty.

   Under the FTA, new government measures affecting services must be applied equally to each other's citizens. The accord also includes the United States' first bilateral agreement covering the financial services sector and recognizes the close link between trade and investment in the modern world. This breakthrough, which has been achieved in a short two-year period, should provide the basis for GATT provisions in these areas and offer the means by which our two countries can, in the future, negotiate on emerging issues.

3. A New Course In Trade Policy

   This agreement is part of a trade policy strategy that should reassure other nations that recognize the value of a more open-world economy.

   We need to enhance the resiliency of the trading system by promoting liberalization on a number of fronts -- multilateral, minilateral, and bilateral. If activity on one frontier of trade negotiation slows, we may be able to maintain momentum and achieve solutions worthy of imitation through other agreements. We can acknowledge the value of gradual progress, without abandoning larger efforts, such as the Uruguay Round, for which we have high hope.

   This strategy is also consistent with domestic political imperatives. Pressure to adjust U.S. trade policy must not take a negative, unilateral form. Trade liberalization is achievable, and we will prosper from it. We can demonstrate a hard-nosed Yankee trader realism about bargaining. If all nations are not ready, we will begin with those that are and build on that success.

   The Canadian-U.S. FTA could be the catalyst, at home and abroad, for a new trade policy strategy. By demonstrating that a bilateral free trade area is a viable option, we can give the next Administration an opportunity to set trade policy on a creative, positive, and pragmatic international course. Such an occurrence would be in the best traditions of this Committee. I urge you to work with us to achieve that result.

In conclusion, I wish to commend Chairman Rostenkowski, Subcommittee Chairman Gibbons, and the Committee staff for the timeliness of today's hearing. By starting the process for approving the agreement and enacting enabling legislation this early in the Congressional session, we will have ample time to work together in a truly bipartisan effort to fashion and achieve our goal of creating the largest geographical free trade zone in the world.

Chairman **Gibbons**. Thank you, Mr. Secretary.

Why do we not go to Mr. Yeutter?

STATEMENT OF HON. CLAYTON YEUTTER, U.S. TRADE REPRESENTATIVE, ACCOMPANIED BY WILLIAM MERKIN, DEPUTY U.S. TRADE REPRESENTATIVE FOR CANADA; JUDY BELLO, ACTING GENERAL COUNSEL; AND CHIP ROH, ASSOCIATE GENERAL COUNSEL, OFFICE OF THE U.S. TRADE REPRESENTATIVE

Ambassador **Yeutter**. Thank you, Mr. Chairman.

I, too, will keep my remarks very brief and simply submit my prepared statement for the record.

Chairman Rostenkowski, on the matter of timing, let me just add to Secretary Baker's remarks by saying that I do hope that we can move this process along as rapidly as we can. It would be not imperative, but highly desirable to have it done by the summer recess because we do have some work in preparing in a systematic way for implementation.

As to the issues themselves, Chairman Gibbons, again thanks to all of you for your cooperation during the negotiating process. We would like to have consulted more than we did with all of you, but as you will recall, a lot of the negotiating was done in the last 72 hours or so before we finally signed off on the agreement.

Aside from that, however, I am convinced the agreements is of enormous merit and I believe that you will be convinced as well, once you have an opportunity to become thoroughly familiar with it. There is no question that these kinds of agreements stimulate a great deal of additional economic activity. The European Community experience illustrates that. The Australian-New Zealand experience illustrates that. We are already seeing it in the United States-Israel agreement.

There is no doubt in my mind, Mr. Chairman, that both countries will benefit enormously from the stimulus that will be given to their economies when this agreement is implemented.

The second point in that regard is that I hope we can all give it what I would call a big picture evaluation. There will inevitably be some critics of this agreement. That is understandable in an accord of this magnitude. Critics are always vocal and beneficiaries of an agreement like this are often much less vocal, simply because they take it for granted.

But we should make an aggregate evaluation of the merits of this agreement to the country and if we will do so, we will find out that there are a whole lot more beneficiaries than critics here in the United States.

Finally, in the broad perspective, I must add that I have had a lot of discussions with people in the American business community about this over the last 2 or 3 months. First of all, there are a great many supporters and I would like to leave with you a listing of some of the companies that are full scale supporters of the agreement, because I think this would be of interest to you, Mr. Chairman.

But aside from that, I want to add that there are some who simply had unrealistic expectations about what would be achieved here. It is important for the committee to have that perspective because I am observing, from personal experience, that we have some industries that are saying gee, we had 10 problems with the Canadians and we are delighted that the agreement solves 9 of them. But it did not solve the 10th one and therefore I think we are going to have to oppose the agreement.

I hope we can keep it in better perspective than that and avoid throwing the baby out with the bath water by discarding the improvement of 9 simply because of dissatisfaction that the 10th was not resolved.

We never intended to cover every trade problem that exists between the United States and Canada in this agreement. We recognize that there are some that have to be held over for additional negotiations at a later time in a different context, either in the context of the Uruguay round negotiations or in the context of further bilateral negotiations.

What we should be evaluating is this agreement versus the status quo. If we do that, we will recognize that in the vast, vast majority of our industries, there is a major improvement over the status quo.

In closing, I would simply say, Mr. Chairman, that I believe this agreement sends a very positive signal around the world. Secretary Baker made that basic point in his presentation, as did Congressman Crane in his earlier comments. At a time when some wish to tilt in the protectionist direction, it certainly is meritorious to consider the benefits of an agreement like this, that goes the other direction, toward a more free and open trading system.

It has been fascinating to me, in international meetings over the last few weeks, since we have signed this agreement, to observe how many representatives of other governments have a deep and abiding interest in what we are doing. Some of that is because they feel left out and wonder if they cannot join the party.

Some of it is concern, by some of our major trading partners, that we are developing a very powerful economic block here in North America that may be an enormous competitor to them. I think it is a rather welcome sight to see some of our trading partners squirm a bit in the context of that development.

Mr. Chairman.

[The statement of Ambassador Yeutter follows:]

TESTIMONY OF AMBASSADOR CLAYTON YEUTTER

Thank you for the opportunity to testify before you today on the U.S.-Canada Free Trade Agreement.

Almost two years of intensive, and sometimes contentious, negotiations culminated on January 2 when President Reagan and Prime Minister Mulroney signed the Free Trade Agreement. It is all too easy, especially in politics, to use hyperbole. But it is no exaggeration to say that this is a truly historic document. I believe that the Agreement is as significant in the economic sphere as the arms control agreement signed last December is in the national security arena. It will probably be another generation before its true significance can be fully appreciated.

This Agreement will substantially increase trade and investment opportunities in both the U.S. and Canada. As President Reagan said, "This historic Agreement will strengthen both our economies and over time create thousands of jobs in both countries."

Trade between the United States and Canada too often is taken for granted. Our trade problems with Japan and the European Community are so much in the spotlight that most Americans still don't realize Canada is our biggest trading partner. Yet over $150 billion in goods and services cross our common border annually. With

$55 billion in exports in 1986, Canada is our largest and fastest growing export market.

These negotiations were characterized by hard bargaining and difficult compromises. Many will seek to identify winners and losers, but that approach is too narrow. This is a win-win Agreement. It should result in increased economic activity, higher trade levels, more jobs, and enhanced competitiveness for both the United States and Canada. The people of both countries will benefit from this Agreement, through lower prices and greater consumer choice.

Practical experience with customs unions and free trade areas affirms what the economists tell us in theory: as barriers are reduced, all parties benefit. The European Common Market and the Australia-New Zealand Free Trade Area, for example, created higher levels of economic activity and productivity—and neither side lost its sovereignty or its national identity.

The U.S.-Canada Free Trade Agreement is the most comprehensive bilateral trade agreement ever negotiated. As the world's largest trading partners we are constructing the world's largest shared market. We have submitted to the Committee today an extensive summary of the Agreement. Therefore, in my formal testimony I will only highlight its main provisions.

Under the Agreement, we have eliminated all *tariffs* between the United States and Canada, without exceptions. Since Canadian tariffs are, on average, twice as high as comparable U.S. rates, total tariff elimination will provide significant benefits for the U.S. exporter.

For the first time since *services* became a major international commercial issue, two major trading partners have negotiated an agreement establishing rules for bilateral trade in services. These rules will cover over 150 service sectors, such as enhanced telecommunications, architecture, accounting, tourism, insurance, and engineering. Not only is this important for U.S.-Canada services trade, but it provides a concrete first step for our efforts to formulate multilateral rules for services at the GATT Uruguay Round. We also concluded the first bilateral agreement with any other country covering the entire financial sector.

We are establishing much freer and more secure trade in *energy*. The Ageement calls for nondiscriminatory access for the United States to Canadian energy supplies and secure market access for Canadian energy exports to the United States. Energy prices will be determined by markets, not by governments. This means that the Canadian Government will not be able to impose higher prices on us than they charge Canadians. Cheaper and more secure energy supplies will make U.S. industries more competitive, both in North America and throughout the world.

Also for the first time, the United States and Canada have agreed to rules governing bilateral *investment* activities. The Agreement reduces the screening of U.S. investment in Canada, and moves Canada towards a more open, market-oriented investment environment.

The question of how to apply countervailing duty and antidumping laws was one of the most difficult to settle. We finally agreed to retain existing national laws and procedures dealing with subsidies and dumping. But final decisions taken under those laws may be appealed to binational *dispute settlement* panels upon the request of either party.

There are also provisions covering automotive trade, agriculture, alcoholic beverages, customs matters, government procurement, product standards, personnel movement, and many other areas. These are all described in detail in the summary we've submitted to the Committee today.

The proposed Agreement spans many sectors of our economies. We expect numerous industries and groups to mobilize strong support. Nonetheless, we recognize that, despite widespread enthusiasm for this Agreement, some may disagree. For some, there may be too much free trade in this Free Trade Agreement. Some special interests will see themselves as vulnerable to increased competition in a free trade area. Others may be timid, afraid to try a creative approach to the future, fearful of the unknown, thinking that no change means no risk. Yet in this dynamic, interdependent world of ours, the future inevitably holds risks, and the status quo is never sustainable. To do nothing is to retrogress.

Then there are those who are disappointed because they wanted *more* and wanted it *now*. Unfortunately, some entered these negotiations with unrealistic expectations that the negotiations would cure all their ills. This Agreement is *not* a panacea for every ill. It will reduce, but not end, trade frictions. It will minimize, but not eliminate, trade distortions. There never has been, and likely never will be, perfectly free trade between any two independent sovereign countries. This Agreement was never intended to solve all our bilateral trade problems and should not be expected to do so. By establishing dispute resolution and consultation mechanisms, the agreement explicitly recognizes this fact. It is a vast improvement over the prevailing situation, and a bold step toward significantly freer trade between our countries. It is a massive advancement over the status quo.

The question on both sides of the border should be "will this Agreement make my country a better and more prosperous place to live a decade or a half century from now?" The objective answer to that question will be a resounding *yes*!

It would be a terrible mistake to evaluate this Agreement on the basis of its impact on particular firms, industries, or even states. We must resist the temptation of thinking small, thinking parochially, or thinking short-term. We must keep our eyes squarely on the long-range benefits for each nation as a whole. This Agreement will help both Americans and Canadians enter the 21st century more competitive and better prepared for the future.

Failure to implement this Agreement would have devastating repercussions for both countries. The United States and Canada would clearly miss out on a once-in-a-century opportunity. We would be deprived of the enormous economic gains which will come from this Agreement as well as the intangible benefits of developing an even closer relationship with our friendly neighbors to the north. Failure would provoke recriminations, hard feelings, and more trade frictions. It would be self-destructive for both of us.

Finally, rejection of this Agreement would send the wrong signal to the rest of the world. We would lose the impetus it gives to the new GATT round, on which both the United States and Canada count so heavily for mere discipline over trade in goods and for international recognition of the need to incorporate into the GATT multilateral discipline on trade-related investment measures, intellectual property protection, and services. If the United States and Canada—the two largest trading partners in the world, next door neighbors, the closest of friends and allies—cannot liberalize their trading relationship, what hope do we have of success in Geneva?

We should approve this Agreement and then build on it in the future. It will, without doubt, be the most significant bilateral trade agreement either country has ever negotiated.

SUMMARY OF

THE U.S.-CANADA FREE TRADE AGREEMENT

THE WHITE HOUSE

Office of the Press Secretary
(Palm Springs, California)

January 2, 1988

STATEMENT BY THE PRESIDENT

I am pleased to announce that Prime Minister Mulroney and I have today entered into an agreement to establish a free trade arrangement between the United States and Canada.

In the truest sense, this is an historic agreement for both sides. We will strengthen what is already a deep friendship between our people by enhancing economic opportunities and creating jobs in both countries. Moreover, the agreement firmly establishes that the trade environment between the two countries will in the future be founded on the principle of free and open trade.

This comprehensive agreement will benefit many sectors of the U.S. economy. Canadian and American tariffs will be phased out completely, saving consumers hundreds of millions of dollars while also improving our export opportunities. It will secure access to Canada's market for American manufacturing, agriculture, financial services, and high technology; improve national security through energy sharing; and provide important investment opportunities. Canada will benefit from the agreement in many of these same ways; the pact is truly reciprocal. As the agreement goes into effect, Canada's access to our large domestic market will grow, and Canadian industrial centers will gain opportunities to develop even more important roles in the economy of North America.

The agreement to establish a free trade area has important international implications as well. It will encourage supporters of free trade throughout the world by demonstrating that governments can remove trade barriers even in the face of protectionist pressures. We hope that the U.S.-Canada example will help set the tone for the Uruguay Round multilateral trade negotiations.

Our negotiations with the Canadian government leading to this agreement incorporated advice from Congress, industry, agriculture, and labor. Our Congress, as well as the Canadian Parliament, will review the agreement fully over the next several months. As this process begins, both sides should be mindful that the decisions they make will help shape the relationship between our countries in the years to come, and will send a signal to the rest of the world.

The creation of the world's largest free trade area will be a mark of leadership and presents an historic opportunity to the United States and Canada. We must not let this opportunity slip from our grasp.

# # #

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 2, 1988

FACT SHEET

U.S.-CANADA FREE TRADE AGREEMENT

The United States and Canada have entered into a free trade agreement that, if approved and implemented, will take effect on January 1, 1989. The agreement will:

- Eliminate all tariffs on bilateral goods trade within 10 years of implementation;
- Reduce nontariff trade barriers;
- Establish principles for the conduct of bilateral trade in services;
- Establish rules for the conduct of bilateral investment;
- Resolve many outstanding bilateral trade issues;
- Enhance the energy and national security of the two countries;
- Facilitate business travel; and
- Establish a timely bilateral dispute settlement mechanism.

Economic Implications

Each year the U.S. and Canada exchange more goods and services than any two countries in the world. Bilateral trade in goods and services exceeded $150 billion in 1986.

The elimination of tariffs and most other barriers to trade between the two countries will increase economic growth, lower prices, expand employment and enhance the competitiveness of both countries in the world marketplace.

Chronology of the Negotiation

- In March 1985, President Reagan and Prime Minister Mulroney asked their trade officials to explore ways to reduce and eliminate existing barriers to trade between the U.S. and Canada.

- On September 26, 1985, Prime Minister Mulroney formally requested that the U.S. and Canada examine the potential for negotiating a comprehensive free trade agreement.
- On December 10, 1985, President Reagan notified the Congress of his intent to enter into bilateral negotiations with Canada using "fast track" procedures.
- On June 17, 1986, U.S. and Canadian negotiators on the free trade area met for the first time in Ottawa.
- On October 3, 1987, President Reagan notified Congress of his intent to enter into a free trade agreement with Canada.
- On December 9, 1987, U.S. and Canadian negotiators initialled a final text of the agreement.
- On January 2, 1988, President Reagan and Prime Minister Mulroney signed the final text of the agreement.

The Fast Track

Section 102 of the Trade Act of 1974 authorizes the President to enter into bilateral free trade agreements and to have the Congress approve them on a "fast track" basis. Section 102 authority expires at midnight on January 2, 1988.

In order for a bilateral agreement to qualify for fast track consideration, several conditions must be met:

- The negotiation must be requested by the foreign country;
- The President must notify the House Ways and Means and Senate Finance Committees of the negotiations, giving them 60 legislative days advance notice:
- The President must notify the Congress of his intent to enter into an agreement 90 days before doing so.

After entering into an agreement, the President must submit it to Congress, along with a draft implementing bill, a statement of any administrative action proposed to implement the agreement, an explanation of how the bill or statement changes or affects existing law and a statement of reasons why the agreement serves the interests of U.S. commerce and why the bill and proposed action are required and appropriate.

The implementing bill is introduced in both Houses of Congress on the day it is submitted and is referred to the committees of jurisdiction. House committees have 45 days in which the House is in session to report the bill; they are discharged automatically from further consideration after that period. The House votes within 15 days in session after the measure has been received from the House committees.

After receiving the bill from the House, the Senate committees have 15 days in which the Senate is in session to report the bill; they are discharged automatically from further consideration after that period. The Senate votes within 15 days in session after the measure has been received from the Senate committees.

Amendments to the bill are not in order. A simple majority of each House is required for approval.

# # #

BRIEF SUMMARY OF KEY FTA PROVISIONS

- Tariffs: Eliminates all tariffs on U.S. and Canadian goods by 1998.
- Rule of origin: Uses a rule of origin to prevent third country goods from receiving FTA tariff treatment.
- Customs: Ends customs user fees for goods and duty drawback programs by 1994 for bilateral trade and duty waivers linked to performance requirements by 1998 (except for the Auto Pact).
- Quotas: Eliminates import and export quotas unless allowed by the GATT or grandfathered by the FTA.
- National treatment: Reaffirms GATT principle preventing discrimination against imported goods.
- Standards: Prohibits use of product standards as a trade barrier and provides for national treatment of testing labs and certification bodies.
- Agriculture: Eliminates all bilateral tariffs and export subsidies and limits or eliminates quantitative restrictions on some products, including meat. Eliminates Canadian import licenses for wheat, oats and barley when U.S. crop price supports are equal or less than those in Canada.
- Wine and Distilled Spirits: Removes most discriminatory practices against wine or spirits imported from the other country.
- Energy: Prohibits most import and export restrictions on energy goods, including minimum export prices. Requires any export quotas used to enforce short supply or conservation measures to share resources proportionately. Provides for Alaskan oil exports of up to 50,000 barrels per day to Canada.
- Autos: Replaces and Canadian content rule for duty-free Auto Pact imports into the U.S. with tougher FTA content rule. (Most auto trade already is duty-free under the U.S.-Canada Auto Pact.) Does not change rules for Auto Pact-qualified companies importing duty-free into Canada, but does not allow new companies to qualify. Permits U.S. auto and parts exports that meet the FTA rule to enter Canada at FTA tariff rates, which phase out over 10 years. Ends all Canadian duty remission programs for autos by 1998.
- Emergency action: Allows temporary import restrictions to protect domestic industries harmed by imports from the other country in limited circumstances.

- Government procurement: Expands the size of government procurement markets that will be open to suppliers from the other country.

- Services: Commits governments not to discriminate against covered service providers of the other country when making future laws or regulations. (Exempts transportation services.)

- Temporary Visas: Facilitates travel for business visitors, investors, traders, professionals and executives transferred intra-company.

- Investment: Provides national treatment for establishment, acquisition, sale and conduct and operation of businesses. (Exempts transportation.) Commits Canada to end review of indirect acquisitions and to raise to C$150 million (in constant 1992 Canadian dollars) the threshold for review of direct acquisitions. Bans imposition of most investment performance requirements.

- Financial Services: Exempts U.S. bank subsidiaries in Canada from Canada's 16 percent ceiling on assets of foreign banks. Ends Canada's foreign ownership restriction on U.S. purchases of shares in federally regulated insurance and trust companies. Reviews U.S. firms' applications for entry into Canadian financial markets on the same basis as Canadian firms' applications. Permits banks in the U.S. to underwrite and deal in debt securities fully backed by the Government of Canada or political subdivisions. Guarantees continuation of multi-state branches of Canadian banks.

- General dispute settlement (except for financial services and countervailing duty and antidumping duty cases): Establishes a binational commission to resolve disagreements.

- CVD/AD dispute settlement (for countervailing and antidumping duties): Allows countries to continue to apply existing national laws. Replaces court review with a binational panel (when requested), which must apply national law in rendering decisions under international law.

- Softwood lumber: Preserves the 1986 agreement with Canada on provincial pricing practices.

- Culture: Exempts cultural industries from the FTA, but authorizes measures of equivalent commercial effect in response to actions otherwise inconsistent with the FTA.

SUMMARY OF THE AGREEMENT

Preamble

The Preamble to the Agreement describes the two countries' desire to improve their economies, to achieve full employment and increase living standards and to strengthen the competitiveness of both countries' firms in the global marketplace.

PART ONE: OBJECTIVES AND SCOPE

The first part includes chapters setting out the objectives and scope of the Agreement and defining key terms.

Chapter One: Objectives and Scope

The Agreement establishes a free trade area (FTA) consistent with the General Agreement on Tariffs and Trade (GATT), the multilateral agreement governing trade relations between 94 countries.

The objectives of the Agreement are to:

- eliminate barriers to trade in goods and services between the two countries;
- facilitate conditions of fair competition;
- significantly liberalize conditions for investment;
- establish effective procedures to administer the Agreement and resolve disputes;
- and lay the foundation for further bilateral and multilateral cooperation.

The federal governments agree to ensure that state, provincial and local governments take necessary actions in areas under their jurisdiction to implement the Agreement. They establish that the Agreement generally will take precedence over pre-existing agreements, except where specified, and they agree to treat each other's goods, services and investment as they treat their own to the extent provided in the Agreement.

Chapter Two: General Definitions

Words critical to the application of the Agreement are defined.

PART TWO: TRADE IN GOODS

Chapters three through twelve deal with trade in goods, building on the GATT and other agreements. Chapters three through six, eleven and twelve apply to all trade in goods. Chapters seven through ten apply to individual sectors.

Chapter Three: Rules of Origin for Goods

The Agreement will eliminate all tariffs between the U.S. and Canada, but each country will maintain its own tariffs on imports from other countries. Because of the disparities between U.S. and Canadian tariff levels, it is necessary to prevent imports from third countries from being shipped through one FTA partner into the other in order to escape the higher tariff.

Rules of origin are used to define those goods entitled to duty free treatment. Goods wholly produced in either the U.S. or Canada will qualify for FTA treatment. Goods containing imported inputs will qualify if they are processed enough to result in one of several specified changes in tariff classification under the internationally agreed Harmonized System; that is, they must be changed in ways that are physically and commercially significant. In some cases, there is the explicit requirement that at least half of the cost of manufacturing the goods must be attributable to Canadian and/or American materials and/or direct costs of processing. Finally, there is a safeguard provision denying FTA treatment to any goods altered merely to circumvent the rules of origin.

Goods that are further processed in a third country before being shipped to their final destination will not qualify for FTA treatment. For example, goods produced by either U.S.- or Canadian-owned maquiladora operations in Mexico will not qualify.

Apparel made from fabric woven in the U.S. or Canada will be duty-free but apparel made from imported fabric will qualify for FTA treatment only up to the following levels:

	Non-Woolen Apparel	Woolen Apparel
	(in million-square-yard	equivalent)
Imports from Canada	50	6
Imports from the U.S.	10.5	1.1

Non-woolen fabric and made-up textile articles, woven or knitted in Canada from yarn produced or obtained in a third country, will qualify for FTA treatment for three years, but only up to an annual level of 30 million square yards.

The two governments will consult regularly to ensure that the rules of origin are operating effectively and to consider changes to the rules where experience suggests changes may be helpful.

Chapter Four: Border Measures

The central element of a free trade area is the elimination of substantially all tariff and nontariff trade barriers.

Tariffs

All bilateral tariffs will be eliminated in stages by January 1, 1998. The removal of tariffs will increase two-way trade and lower costs to consumers in both countries, thereby creating a single U.S.-Canadian market of 265 million people. Approximately 75 percent of bilateral merchandise trade, currently in excess of $120 billion, already moves free of duty. The remaining 25 percent, however, is subject to tariffs. Canadian tariffs average about 9-10 percent, or about twice the U.S. average of approximately 4-5 percent.

The results of the tariff negotiation are expressed in terms of the new Harmonized System (HS) of tariff nomenclature. (If either country fails to adopt the HS, duties will be eliminated by converting the schedule of reductions back to current tariff schedules.) All dutiable products in the HS were assigned to one of the following three staging categories: (1) immediate elimination; (2) five equal, annual cuts (20 percent per year), and (3) ten equal, annual cuts (10 percent per year). In almost all instances, staging on a particular product is the same in both countries. The stages for various commodities were selected in recognition of the fact that industries in both countries will require varying periods of adjustment to changing competitive conditions.

Import-sensitive industries on both sides of the border were generally accorded 10-year staging, which would result in the duty being eliminated by January 1, 1998. These include plastics, rubber, most wood products, lead, zinc, base metal articles, footwear, textiles and apparel, steel, many alcoholic beverages, consumer appliances, precision instruments, watches and most agricultural and fish products.

Immediate duty elimination is scheduled for such products as automatic data processing and related equipment, certain telecommunications equipment, motorcycles, whiskey and rum, some processed fish, raw hides, leather and furs.

All other duties will be phased out by January 1, 1993. Included within this category are paper, furniture, printed matter, chemicals, after-market automotive parts, precious jewelry, most machines, some musical instruments, and petroleum.

The Agreement provides that tariffs can be reduced faster whenever the two governments agree.

Customs Programs and Procedures

The Agreement eliminates duty drawback for bilateral trade, duty waivers linked to performance requirements (except as provided in the chapter on automotive trade), and the U.S. customs user fee for Canadian merchandise. It authorizes importers and exporters to certify that goods meet the rules set out in the rules of origin chapter and are therefore eligible for FTA tariff treatment. These measures are intended to prevent imports from third countries from benefiting from the FTA.

Duty Drawback: Both countries will end duty drawback on exports to the other as of January 1, 1994, with limited exceptions. Most countries, including the United States and Canada, have duty drawback programs, which provide for the return of duties on imports when they or substituted domestic goods are incorporated in goods subsequently exported. Because of the elimination of bilateral tariffs, continuation of duty drawback between the two parties would allow duty free-entry of third-country imports through the other FTA party and would distort trade and investment decisions.

As an exception to the ban on duty drawback for bilateral trade, the following goods will continue to benefit from the program:

- goods remaining in the same condition on exportation as on importation (but they would not benefit from FTA tariff treatment),
- dutiable goods of the United States or Canada if they are incorporated into, or directly consumed in, the production of goods subsequently exported back to the FTA partner, and
- goods where both parties agree to maintain duty drawback (this category consists of (1) imported citrus products and (2) fabric imported from a third country and made into apparel that is subject to the most-favored-nation (MFN) tariff when exported to the other party).

Also, beginning January 1, 1994, goods withdrawn from a Foreign Trade Zone (FTZ) or benefiting from a similar program will be treated the same whether destined for consumption in the U.S. or Canada. For a good made in a U.S. FTZ, duty must be paid on the value of any foreign components at either the component or the finished-good tariff rate. Maintaining the full benefits of these programs, like duty drawback programs, would have allowed imports from third countries to enter duty-free through the other FTA party and would distort trade and investment.

Duty Waiver: Neither party will introduce new duty waivers or expand existing ones linked to performance requirements after the later of June 30, 1988 or the date of Congressional approval of the Agreement. Existing programs will be eliminated by January 1, 1998. This provision ends the trade-distorting practice of requiring a firm to buy local inputs or to export output in exchange for a tariff exemption.

The 1998 termination date excludes certain waivers affecting automotive trade, as specified in the section on automotive trade. The countries reserve existing rights under other agreements with respect to the Auto Pact or comparable arrangements. This provision maintains the U.S. right to challenge Canadian performance requirements under GATT rules.

If a party can show that a duty waiver to a specific firm granted on a commercial good hurts its commercial interests, then the party granting this waiver must either make it generally available to any importer or end the program. This provision prevents discrimination among firms.

Customs Fees: Starting on January 1, 1990, the U.S. must cut by 20 percent each year the customs user fee on goods qualifying under the rule of origin of the FTA. The fee on Canadian goods will be eliminated as of January 1, 1994. Neither country may introduce new customs user fee programs to pay for the costs of Customs administration on goods from the other country.

Customs Procedures: The Agreement authorizes the governments to require importers to submit a written declaration of origin based on a written declaration of origin provided by the exporter. It requires each country to make it unlawful for the exporter to provide a false certification. False declarations by either the importer or the exporter could be prosecuted by the government of the country in which the offending business is located. This provision will help avoid fraudulent claims of FTA origin to avoid tariffs.

The Agreement also provides for cooperation on enforcement, consultations on uniform application of the rule of origin, review and appeal procedures for decisions on the rule of origin and consultations on major changes affecting customs administration.

Import and Export Restrictions

Import and export quotas and other restrictions can distort trade flows. The elimination of such barriers is essential to an effective free trade area. Unless specifically grandfathered by the Agreement or allowed by the GATT, existing quantitative restrictions will be eliminated immediately or according to a timetable. Some specified restrictions that have been exempt from GATT obligations will be eliminated for trade between the U.S. and Canada.

In all cases where quantitative restrictions are prohibited under the Agreement, use of minimum export prices and minimum import prices (except those used to enforce countervailing duty and antidumping orders) also are prohibited.

Where either country prohibits imports from a third country, it may similarly prohibit the pass-through of imports from that country through the FTA partner. This provision preserves the right to enforce embargoes for foreign policy or other reasons (e.g., embargoes against Cuba or Iran).

Export taxes will not be permitted under the Agreement unless the tax is also levied on goods destined for domestic consumption. In addition, where GATT-permitted export restrictions are applied (such as in the event of a short-supply emergency), the restriction must not reduce the proportion of the good that was exported to the FTA partner relative to the total supply of the good prior to the restriction.

Chapter Five: National Treatment

The Agreement incorporates the GATT requirement that, once imported into either country from the other, goods will not be the object of discrimination. This ensures that the elimination of border measures will not simply be replaced by internal measures favoring domestic goods over imports. This rules out higher sales or excise taxes or regulatory requirements on imports. Discrimination against goods from the other country by provinces or states is prohibited even if a province or a state discriminates against goods from other provinces or states.

Chapter Six: Technical Barriers

There are legitimate public policy objectives for which technical regulations and standards are maintained (e.g., to protect human, animal or plant life or health; to preserve the environment; and to protect essential security interests). However, standards measures may work to inhibit trade.

The Agreement builds on current obligations under the GATT Standards Code not to use standards to hinder trade unnecessarily. Certification and testing facilities will receive nondiscriminatory treatment in both countries. We also agree to work to harmonize our standards where appropriate so that similar products do not have to be made or work in different ways in order to be sold in the other country. Provisions of this chapter do not apply to agricultural goods, which are covered in the chapter on agriculture.

These provisions do not mean that the U.S. will have to adopt the metric system or Canadian standards, or that standards cannot be adopted for legitimate regulatory reasons. The basic rule remains that standards must not create unnecessary obstacles to trade. Obstacles to trade are not created where the demonstrable purpose of standards-related measures is to protect health and safety, environmental, national security and consumer interests. However, such measures must not operate to exclude goods of the other country if they meet these objectives.

Both countries will assure that testing facilities and certification bodies are treated in a nondiscriminatory manner. This paves the way for the recognition by Canadian authorities of U.S. facilities and bodies. This does not require that all testing labs receive accreditation, especially if an individual lab is not qualified in the view of the accrediting authority, but forbids the discrimination against labs on the basis of nationality.

Canada and the United States agree to harmonize (make compatible) federal standards-related measures to the greatest extent possible, and to promote harmonization of private standards. The Agreement does not require that standards and technical regulations be harmonized but provides for it where appropriate. State and private standards-setting bodies are not obligated under any of these provisions.

Both countries will provide for enhanced transparency in the regulatory process. To this end, we will expand our information exchange and guarantee a 60-day comment period on proposed standards-related regulations at all levels. This is important to manufacturers because they need to know about regulatory changes which may affect their products so that they can prepare for the changes, and have some say in them. Similar provisions will apply for state, provincial, and private standards activities at a "best efforts" level.

Processes and production methods are included as standards-related measures subject to the provisions of the Agreement. This provision makes clear that specifying how a product is made is just as much a standards-related measure, and subject to the rules of this section, as specifying how the product should perform.

Both countries will recognize each other's systems for accrediting testing labs. Currently, this is a small program operated by the National Bureau of Standards in the U.S. and the

Canadian Standards Association in Canada to accredit testing labs. Labs accredited under one program will automatically receive recognition in the other country.

Chapter Seven: Agriculture

The U.S. and Canada agree that the achievement of our major trade objectives for our agricultural sectors will require multilateral solutions and accordingly will work together in the Uruguay Round and other fora to liberalize agricultural trade. Nevertheless, the FTA includes provisions providing U.S. and Canadian agricultural producers increased opportunities to market their products in the future with no tariff barriers and with fewer nontariff barriers.

Various barriers to trade in agriculture have arisen in recent years in an attempt to stabilize the agricultural economy. Quotas, import licenses, technical requirements and subsidies have all had a negative effect on trade in agricultural products. The Agreement provides for a number of liberalizing measures in an era of increasing protectionism.

The Agreement provides for semi-annual consultations between the U.S. and Canada on agricultural issues. It also provides that each country shall retain its rights and obligations under the GATT except as otherwise provided.

Tariffs

All agricultural tariffs between the U.S. and Canada will be eliminated within 10 years, thereby facilitating trade and leading to higher efficiency. The agricultural sectors likely to be most affected by the tariff elimination will be fresh fruits and vegetables because some of the highest agricultural tariffs are applied on those products.

Both countries will reserve the right, for 20 years, to apply a temporary duty on designated fresh fruits and vegetables to protect their domestic producers from import surges from the other country. This provision will facilitate a smooth transition to a tariff-free border for both countries, providing a mechanism to prevent unnecessary hardship to fruit and vegetable producers. The temporary duty can only be triggered if (1) the import price falls below 90 percent of the previous five-year average monthly import price for five consecutive days, and (2) the planted acreage in the importing country is not higher than the previous five-year average for the particular fruit or vegetable. The total duty applied under this provision cannot cause the total duty on these products to exceed the lesser of the most-favored-nation (MFN) duty that was in effect for the corresponding season prior to the Agreement or the then current MFN duty. Moreover, it can be applied only once per year per product for no longer than 180 days. The temporary duty will be removed immediately once the import price exceeds 90 percent of the five-year average for five consecutive days.

Subsidies

The U.S. and Canada have agreed to work together to achieve, on a global basis, the elimination of all subsidies which distort agricultural trade through multilateral negotiations such as the Uruguay Round. This is consistent with the U.S. proposal for agriculture in the Uruguay Round. The FTA partners have agreed not to use export subsidies on agricultural goods exported directly or indirectly to the other country. Each country has also agreed not to sell agricultural goods in the other country at a price below the acquisition price plus handling, storage and other costs. This will prevent the use of practices such as dual pricing. The Agreement will not limit other forms of production subsidies in either country.

Canada has agreed to exclude from the transport rates established under the Western Grain Transportation Act (WGTA) agricultural goods originating in Canada and shipped via West Coast ports for consumption in the U.S. These subsidies were instituted by Canada in 1984 as an expansion of the Crow's Nest Act. It is anticipated that this will primarily affect shipments of millfeed and rapeseed meal into the U.S. Pacific Northwest. The Agreement will not affect WGTA subsidies on shipments through Eastern ports (Thunder Bay), which are not conditioned on export and have been in place since 1897.

These provisions do not prevent imposition of antidumping or countervailing duties.

Access Issues

Grains: Canada has agreed to eliminate import licenses for U.S. wheat, barley, oats and their products when U.S. government support for the particular crop is equal to or less than that of Canada. Each country will calculate its own support level in accordance with a methodology set forth in the Agreement. There is a mechanism to resolve any disagreement over the other country's calculation. When it occurs, the elimination of licenses will provide greater access for the U.S. to the Canadian market for both grains and processed products containing grains.

The Agreement will not affect the ability of either country to legislate changes in domestic support programs for agricultural products. Both countries have also reserved the right to impose or reimpose import restrictions on particular grains if imports increase significantly as a result of a substantial change in either country's support programs for that grain.

Meat: In evidence of the spirit of free trade, the two countries will exempt each other from import quotas applied under their respective meat import laws, unless those imports are frustrating import restrictions on meat imports from other countries. This is a further step ensuring access to each other's markets. This provision will not allow the transshipment or substitution of meat from third countries to circumvent the respective meat import laws. Direct third country access to the U.S. for meat will remain unchanged by the Agreement.

Poultry and Eggs: Canada has agreed to increase the base level for its import quotas for eggs, chicken, turkey and products thereof to a level reflecting total shipments over the last five years. This provision will increase the amount of guaranteed access into Canada. As a result of the tariff reductions, U.S. exporters should have a competitive advantage over other potential supplying countries for the increased quotas.

Sugar: The U.S. has agreed not to impose import restrictions on products from Canada containing ten percent or less sugar for purposes of restricting the sugar content of those products. This provision will not limit the ability of the U.S. to restrict the entry of processed products with higher than ten percent sugar content for purposes of protecting the sugar program.

Technical Regulations

The U.S. and Canada have agreed to work together to harmonize, to the greatest extent possible, technical regulations affecting agricultural, food, beverage and certain related goods. These provisions will facilitate trade for both countries by eliminating, where possible, technical requirements that can amount to non-tariff trade barriers. Specific schedules address the following areas: feeds; fertilizers; seeds; animal health; veterinary drugs; plant health; pesticides; food, beverage and color additives; packaging and labeling; meat, poultry and egg inspection; dairy, fruit and vegetable inspection, and unavoidable contaminants in food and beverages.

Chapter Eight: Wine and Distilled Spirits

Export opportunities for U.S. producers of alcoholic beverages have been limited by measures in Canada that discriminate against the internal sale and distribution of imported products in Canada. The Agreement does not prohibit the regulation of alcoholic beverages in either country, but does eliminate the most significant existing discriminatory practices in Canada and prohibit discrimination against the products of the other country for all new regulations.

Listing measures (limits on brands or types of products that may be sold) must no longer discriminate against wine or distilled spirits of the other country. The lone exception to this requirement is that the province of British Columbia may continue to grant automatic listing to certain estate wineries, provided that listing measures do not otherwise discriminate. Criteria for decisions on listings must be based on normal commercial considerations and listing measures cannot be used to create disguised trade restrictions. Further, listing measures must include procedures for a fair a expeditious appeal when an application for a listing is denied.

The Agreement requires the elimination of discriminatory pricing measures for wine and distilled spirits, including charging a higher markup for U.S. products than locally produced products. Any existing markups must be eliminated when the Agreement is implemented for distilled spirits and must be phased out by January 1, 1995 for wine (with half of the differential to be eliminated by January 1, 1990). Differential pricing measures may only be maintained if the differential between products of the two countries does not exceed the additional cost of service for imported products relative to domestic products. Any such cost of service differential will be subject to audit to ensure it reflects actual higher costs rather than arbitrary protection for local products.

The Agreement prohibits discrimination between Canadian and U.S. wine and distilled spirits in terms of the distribution system for these products. However, on-premise sales by a winery or distillery solely for items produced by them may continue. Private wine store outlets existing on October 4, 1987 in Ontario and British Columbia may continue to discriminate in favor of wine produced in those provinces, but distribution measures in those provinces must otherwise provide nondiscriminatory treatment. Quebec is also allowed to continue to require that wine sold in grocery stores must be bottled in Quebec, as long as alternative outlets for U.S.-bottled wine are provided.

Canada has also agreed to eliminate any measures which require that distilled spirits imported in bulk must be blended with Canadian spirits in order to be sold in Canada.

Canada will recognize Bourbon Whiskey as a distinct product manufactured in the United States and the United States will recognize Canadian Whiskey as a distinctive product of Canada.

Tariffs

Tariffs on whiskey and rum will be eliminated when the Agreement takes effect. Tariffs on other distilled spirits, wine and beer will be phased out in ten equal annual amounts so that duty free status will be obtained on January 1, 1998.

Chapter Nine: Energy

Energy is the single most important input for a developed economy. Without it, there could be no basic industries such as chemicals, steel and other primary metals, autos, aviation, and pulp and paper. All of these industries require energy as a key input and some also manufacture products whose use depends on the availability of energy. Thus, assuring secure supplies of energy at stable and reasonable prices is an essential priority of U.S. economic and trade policy.

The U.S. is the world's largest energy consumer. Although we are also one of the leading producers of energy, the requirements of our economy for various forms of energy are so great that we must import significant amounts of energy to meet these needs. Canada is by far our largest energy supplier. We import more crude oil and petroleum products from Canada than from Saudi Arabia, Venezuela or Mexico. Canada supplies almost all of our natural gas and electricity imports, and more than two-thirds of our uranium imports. In addition, Canada is our largest coal export market. The U.S. and Canada share the world's largest bilateral energy trade relationship, with two-way trade of $10 billion per year or more.

Regrettably, the history of this trade has been marked by a considerable degree of government intervention on both sides, in the form of export restrictions, minimum export price requirements, import fees and quotas, and various other trade restrictions. There have also been domestic programs in each country which have distorted trade both in energy itself and in energy-intensive products such as petrochemicals. While these past actions have often been in response to short-term concerns, they have generally worked to the longer-term disadvantage of both countries. At times, artificially low prices have stimulated excess demand while suppressing supply and thus causing shortages. At other times, artificially high prices have stifled economic activity throughout the economy, especially in energy-intensive industries. Overall, the uncertainty about future government energy trade policies and actions has inhibited investment in energy production and energy consuming industries in both countries.

The Agreement builds on the lessons learned from the past by renouncing excessive government interference in our future energy trade and provides a framework for rational economic development of that trade. Because it will encourage the most efficient system for production, distribution and use of energy between the two countries, it will enhance the energy security of both countries. It should also result in lower overall energy costs over the longer term, which will contribute significantly to the international competitiveness of basic industries in each country.

The energy goods covered by the Agreement include petroleum, natural gas, coal, electricity, uranium and other nuclear fuels.

The Agreement reaffirms the rights and obligations of both the United States and Canada with respect to the GATT prohibitions on import and export restrictions. Moreover, it makes explicit that both countries interpret the GATT to prohibit minimum export price requirements. In addition, the Agreement extends the GATT discipline to cover a prohibition on export taxes.

In an annex, the Agreement lists three specific changes to conform existing laws to these commitments: (1) The U.S. will exempt Canada from any potential restrictions on enrichment of foreign uranium which might be imposed under Section 161v of the Atomic Energy Act; (2) Canada will exempt the U.S. from its export restrictions on unprocessed uranium; and (3) the U.S. will allow Canada access to a maximum of 50 thousand barrels per day of Alaskan oil currently restricted from export under Section 7(d) of the Export Administration Act, subject to the condition that this oil will be transported to Canada from a suitable location in the Lower 48 States.

The Agreement affirms that, as provided by the GATT, either country may restrict exports where necessary to respond to supply shortages, to maintain a domestic price stabilization program or to prevent exhaustion of a finite energy resource. However, it may impose a restriction only if the restriction (1) does not reduce the proportion of total supply historically available to the other country; (2) does not disrupt the normal channels of supply or mix of energy products; and (3) does not impose a higher price on exports than for comparable domestic sales. What this means is that neither country will treat the buyers or sellers of energy of the other country as "second-class" customers or suppliers. Canada gains assured market access for its energy exports to the U.S., and the U.S. gains assured access to Canadian supplies for its imported energy requirements.

The Agreement provides for consultation in the event either country believes the energy regulatory actions of the other country would directly discriminate against its energy goods or businesses.

An annex to the Agreement lists regulatory changes to be made to conform to the Agreement. Canada will eliminate its electricity export price test that requires the export price to be not significantly less than the least-cost alternative available to the importer. Other Canadian export tests (price tests and "surplus" tests) must be administered in a manner consistent with the principles of the Agreement.

The U.S. will eliminate any discriminatory treatment of British Columbia Hydro vis-a-vis comparably situated U.S. utilities in terms of access to the Bonneville Power Administration Intertie into the California electricity market. It is expected that the parties involved in the complex West Coast electricity market will negotiate long-term arrangements to assure the development of electricity trade in a mutually beneficial manner consistent with the objectives and principles of the FTA.

The Agreement recognizes the importance of government incentives for oil and gas resource development to the energy supply security of both countries and, therefore, allows such incentives to be maintained or created. This provision does not prevent the imposition of antidumping or countervailing duties.

The Agreement provides for only quite narrow exceptions to the prohibition on trade restrictions in situations involving national security; these are limited to situations of militarily related national security. The Agreement declares that there is no inconsistency between this Agreement and the obligations of either country under the International Energy Program of the International Energy Agency.

Chapter Ten: Trade in Automotive Goods

Automotive trade accounted for over one-third, or $45 billion, of the total bilateral trade between the U.S. and Canada in 1986. Under the U.S.-Canada Automotive Products Trade Agreement (Auto Pact) of 1965, 95 percent of bilateral automotive trade already moves duty-free. As a result of the FTA, all automotive trade will be duty-free, as long as it meets the rule of origin.

The U.S. and Canada have agreed to the removal of tariff and nontariff barriers and new origin rules designed to assure that the benefits of the FTA accrue to North American auto and auto parts producers. By removing trade and investment distorting practices, the FTA will encourage greater efficiency in motor vehicle production and will provide greater assurance that economic factors determine trade and investment choices between the U.S. and Canada.

Tariffs and Rule of Origin

All tariffs on U.S. and Canadian motor vehicles and parts will be eliminated by January 1, 1998. Most will be phased out over 10 years, but tariffs on aftermarket parts will be eliminated in five years.

The FTA rule of origin which is described in the chapter on rules of origin will apply to all U.S. imports of Canadian automotive products, but only to Canadian imports of U.S. automotive products not entering Canada under the Auto Pact. The FTA rule is based on change in Harmonized System tariff classification and includes a 50 percent U.S.-Canadian direct cost of manufacturing test for vehicles and specified assembled parts.

Here is how the new FTA rules and the existing Auto Pact will work for imports of autos and parts into the U.S. from Canada:

> The FTA rule of origin will replace the rule currently used by the U.S. to implement the Auto Pact. Upon implementation of the FTA, those motor vehicles and original equipment parts currently eligible for duty-free entry under the Auto Pact will be able to enter the U.S. duty-free only if they meet the new FTA rule of origin. Other auto parts that meet the FTA rule of origin will pay the FTA tariff until it is fully eliminated. Motor vehicles and parts that do not meet the FTA rule of origin will pay the full current most-favored-nation (MFN) duty, not the FTA duty.
>
> The new rule of origin is tougher in that it requires that substantial manufacturing costs (materials and direct processing costs) be incurred in the U.S. and/or Canada, while the current test only assures that substantial costs (which can include advertising and overhead) or profits are incurred in the U.S. and/or Canada. This change will help both U.S. and Canadian auto parts manufacturers.

Here is how the new FTA rules and the existing Auto Pact will work for imports of autos and parts into Canada from the U.S.:

> Canada's criteria for duty-free access into Canada under the Auto Pact will not change. Qualified producers (those that meet Canada's performance requirements) will continue to be able to import motor vehicles and parts into Canada duty-free from anywhere in the world. However, it has been agreed in the FTA that no new firms may qualify for Auto Pact or Pact-like benefits in Canada, except for the General Motors-Suzuki (CAMI) joint venture, if it qualifies by the 1989 model year.
>
> For companies not meeting Canada's Auto Pact performance requirements, the FTA tariff will apply (until it is fully eliminated) to products imported from the U.S. that meet the FTA rule of origin. Motor vehicles and parts that do not meet the FTA rule of origin will pay the full current most-favored-nation (MFN) duty, not the FTA duty.

Duty Remission

Canada's export-based duty remission program will be eliminated January 1, 1989 on exports to the U.S. and terminated in all cases by January 1, 1998. The export-based duty remission program allows firms in Canada to reduce duties on motor vehicle and part imports in proportion to the Canadian value-added in their exports of automotive parts.

Canada's production-based duty remissions will end by January 1, 1996 or earlier as contracts expire. Production-based duty remissions allow firms that are not members of the Auto Pact in Canada to avoid duties on automotive imports into Canada as long as they meet Canadian local content requirements.

There will be no new recipients of any Canadian automotive duty remission benefits, and current benefits will not be enhanced. U.S. and Canadian auto parts manufacturers will benefit from the elimination of these measures, which distort trade and investment.

Other Provisions

Canada will phase out its embargo on the importation of used vehicles over five years.

A Select Panel will be established to assess the state of the North American industry and to propose public policy measures and private initiatives to improve its competitiveness in domestic and foreign markets.

Chapter Eleven: Emergency Action

One of the basic tenets of the GATT trading system is that countries should be allowed to take temporary emergency actions restricting imports in order to remedy serious injury caused by increased imports. The drafters of the GATT recognized that a country would be more willing to enter into contractual obligations to reduce its trade barriers if it were able to reimpose the duties when and if imports of a particular product increased to such an extent as to cause injury to one of its industries producing a competing product. Both the U.S. and Canada have established "safeguard" procedures to provide emergency relief to domestic industries injured by imports.

The Agreement provides a two-track system aimed at preserving the existing rights of workers and firms in both countries to gain relief from import-related injury, while at the same time assuring the U.S. and Canadian business communities that the trade expansion created by the FTA will not be suddenly and arbitrarily cut back. Although the U.S. and Canada have not used such actions against each other very often, the possibility of taking actions reduces certainty of market access.

In the United States, domestic producers and workers will have access to relief under special revised provisions of Section 201 of the Trade Act of 1974.

Under the bilateral track, if imports resulting from FTA duty reductions cause serious injury, the importing country may reinstate the pre-Agreement tariff or current MFN duty (whichever is lower), or suspend duty reductions. This can be done only once per product during the ten-year transition period for no longer than three years. After the transition period, such actions can only be taken by mutual agreement.

Under the global track, the FTA partners retain their GATT rights except that the importing country must exclude the other from an action involving other countries unless that country's imports are substantial and are found to be contributing importantly to the injury from imports. For purposes of this track, imports in the range of five percent to ten percent or less of total imports would normally not be considered substantial. "Contributing importantly" means an important cause, but not necessarily the most important cause.

If the exporting country is initially excluded from an import relief action, the importing country has the right to subsequently bring that country's trade under the import restraint action in the event of a surge in imports from that country. In no event may the exporting country's exports be cut back below the level they reached during a reasonable recent base period.

The FTA partner taking either a bilateral or global action must provide compensation aimed at expanding trade in another product or the exporting FTA partner may take a substantially equivalent retaliatory action.

Disputes arising after an action is taken are subject to binding arbitration under the dispute settlement provisions of the FTA.

Chapter Twelve: Exceptions for Trade in Goods

The Agreement incorporates the provisions of the GATT allowing for exceptions from GATT rules for limited reasons, such as to protect public health or morals or national treasures.

It also specifies certain miscellaneous exceptions from the FTA, including both countries' export controls on logs and existing East Coast Canadian export restrictions on unprocessed fish. Both countries' practices on the internal sale and distribution of beer are also exempted, but amendments to existing practices cannot deviate more from the obligations of the Agreement, and new measures must conform with the FTA.

GATT rights with respect to measures exempted from the FTA are expressly preserved.

PART THREE: GOVERNMENT PROCUREMENT

The general provisions regarding goods trade in Part Two do not apply to purchases of goods by governments.

Chapter Thirteen: Government Procurement

The Agreement expands the size of the government procurement markets which will be open to free and fair competition between U.S. and Canadian suppliers. It also establishes a solid framework for further elimination of "buy national" restrictions that presently inhibit sales by U.S. exporters to Canada.

The procedures used in the Agreement for government purchases build upon the open and competitive principles and procedures of the GATT Government Procurement Code. It improves Procurement Code procedures by establishing a common rule of origin, requiring an effective bid challenge system for all potential suppliers and improving transparency of bid selection, particularly for procurements which are single tendered. The U.S. currently provides for effective bid challenge procedures but Canada does not.

The U.S. and Canadian governments apply various buy national preferences in favor of suppliers of domestic goods. These preferences inhibit -- and in some cases prevent -- competition from foreign products. Under the Agreement, suppliers of goods which are manufactured in the U.S. and Canada and which contain at least 50 percent U.S. or Canadian content will be treated on an equal basis to suppliers of domestic goods for covered procurements.

"Buy American" and "Buy Canadian" restrictions are eliminated on the procurement of goods by U.S. and Canadian entities covered by the GATT Government Procurement Code between the Code threshold (for 1987, $171,000) and an FTA threshold of $25,000, and are subject to the same exclusions and exceptions as those covered by the Code.

Viewed in conjunction with the Procurement Code, the FTA will allow U.S. exporters to compete on a nondiscriminatory basis for all Code-covered procurements over $25,000.

The value of procurement opportunities covered by this chapter is estimated at approximately $3 billion of U.S. procurement and $500 million of Canadian procurement. Previously a majority of Canadian purchases were below the Code threshold, versus a small minority for U.S. entities. Therefore, Canadian entities will open a much higher percentage of procurements under the FTA than will U.S. entities. As a result of the new opportunities offered by Canadian entities under this chapter, procurement opportunities in Canada for U.S. exporters are increased by more than 100 percent.

Principles are established for bid challenge procedures. These include a requirement that a reviewing authority with no substantial interest in the outcome of the procurement be responsible for deciding bid challenges. Suppliers may protest government procedures on their own initiative and receive timely settlement of complaints.

Each government must provide transparency in its procurement process. Public notice must be provided of all the criteria it intends to use in evaluating a bid (including offsets) and the award must be based on those criteria.

Within one year after the conclusion of the current multilateral negotiations on the GATT Procurement Code, there will be an opportunity to improve and expand coverage of this chapter by further negotiations with Canada.

PART FOUR: SERVICES, INVESTMENT AND TEMPORARY ENTRY

GATT rules cover trade in goods only. Services and investment are not covered. The FTA goes beyond traditional GATT areas to establish rules in these areas that break new ground and set an important precedent for the Uruguay Round of multilateral trade negotiations, in which GATT countries are considering whether to extend GATT disciplines to these new areas.

Chapter Fourteen: Services

The Agreement breaks new ground by providing rules governing trade and investment in services industries. Both the U.S. and Canada have relatively open markets for services. The Agreement will ensure continued openness by providing that future laws and regulations will not discriminate against services providers of the other country.

A wide range of services industry sectors are covered by the agreement, including: construction, tourism, insurance, telecommunications-network-based enhanced services and computer services, some professional services, services relating to mining and agriculture, wholesale and retail trade, management services and other business services. Transportation services are not covered.

Future U.S. and Canadian government measures such as laws, regulations or licensing requirements affecting services trade and investment must not have the purpose or effect of discriminating between the services providers of either country. The right of establishment, the right to sell across the border, and greater transparency in regulations are also provided. The Agreement does not affect subsidies for or government procurement of services.

There are annexes which clarify the application of the services agreement to architecture, tourism, and telecommunications-network-based enhanced services and computer services.

In architecture, both sides will review the work of professional organizations to develop mutually acceptable standards.

In telecommunications-network-based enhanced services and computer services, the Agreement ensures the future development of an open and competitive market including access to and use of the basic telecommunications network.

In tourism, the Agreement ensures continued open markets for tourists and tourism service providers.

The Agreement provides the opportunity for future negotiations to increase liberalization, sectoral coverage and other obligations.

Chapter Fifteen: Temporary Entry for Business Persons

The U.S. and Canada have agreed that as a part of the special trading relationship established by the Agreement, it is desirable to facilitate temporary entry for business persons into the territory of each country on a reciprocal basis. The Agreement and immigration laws of both countries will provide transparent criteria and procedures for temporary entry of certain persons who conduct trade in goods and services as well as investment activities, while maintaining necessary provisions to ensure border security and protect indigenous labor and permanent employment. These provisions facilitate entry for citizens of each country into the territory of the other on both a short- and long-term basis depending on the type of commercial activity involved.

The two countries agree to provide temporary entry for business persons through transparent laws and regulations and to provide explanatory materials in order to enable business persons to become acquainted with such laws and regulations. These provisions will be applied in a manner that provides the desired entry without undue delay or impairment in the conduct of trade and investment under the Agreement.

The countries will exchange data on temporary entry and consult at least once a year concerning the operation of the Agreement and consider provisions that may further enhance temporary entry, including amendments and additions to coverage of persons under the Agreement.

Should a dispute arise concerning the provisions of this chapter, it may be referred to the dispute resolution provisions of the Agreement if the matter involves a pattern of practice and available administrative remedies have been exhausted.

Coverage of persons involves Business Visitors and Professionals who shall be admitted without prior approval procedures, petitions, labor certification tests, or other procedures having similar effect, as well as Intra-Company Transferees and Traders and Investors who will no longer face labor certification tests or other similar procedures.

Business Visitors

A business person engaged in one of the covered occupations and entering for the described purpose shall be granted entry under Schedule 1 of the Agreement. This schedule defines the persons involved in a number of business areas and the activities undertaken. The approach provides transparency and specificity to a number of areas of business activity that have in the past been unclear or subject to conflicting interpretation.

One important provision allows persons of either country to provide after-sales service for the length of the contract or warranty period on commercial or industrial machinery and equipment or computer software that has been purchased outside its territory. This allows firms to better provide after-sales service functions that are often a necessary component in the sale of complex machinery, equipment and computer software.

Traders and Investors

A business person seeking temporary entry in order to carry on substantial trade in goods or services in a capacity that involves supervisory, executive or essential skills, or to direct the operations of an enterprise in which the person has invested, shall be granted temporary entry under new, liberalized procedures in the Agreement. The new provisions provide business persons the assurance that after they have received an initial certification, they may freely enter as often as their business needs require.

Professionals

The FTA partners will admit persons who are members of certain professions and engaged in their related business activities. Coverage includes the generally recognized professions such as engineers, architects, and certain scientific and technical specialties. The Agreement also covers newer professions such as management consultants. Revised procedures should provide improved processing of entry requests.

Intra-Company Transferees

Intra-company transferees, when engaged in managerial or executive activities or possessing specialized knowledge, will be admitted. Requirements that certain companies train replacement personnel have been removed.

Chapter Sixteen: Investment

For U.S. investment in Canada, the Agreement builds on the substantial liberalization measures already taken by the present Canadian government. It freezes those measures in place and bars most new measures which would adversely affect U.S. investment.

For its part, the U.S. will continue its open investment climate for Canadian investors in accord with the basic principles set out in the President's Investment Policy Statement of September 9, 1983.

The Basic Rules

The Agreement sets out four basic rules to govern the treatment of investors from each country:

National Treatment and Non-discrimination: Each party is to treat investors of the other party at least as favorably as its own investors (in like circumstances) with respect to the establishment of new businesses and the acquisition of existing business, and with respect to the conduct, operation and sale of business enterprises located in its territory. Neither party, thus, can require that investors sell investments by reason of their nationality, or that their own nationals must hold a minimum level of equity in investments made by investors of the other country.

Elimination of Performance Requirements: Neither party, when permitting an investment in its territory, or when regulating an investment, may impose or enforce trade-distorting measures which require an investor to export a certain amount of goods, or substitute locally produced goods for imports, or buy or give a preference to locally produced goods. (This rule also applies to third country investors when such measures could significantly affect U.S.-Canadian trade.)

Expropriation Only in Accordance with International Law Standards: Neither party may directly or indirectly expropriate the holding of an investor from the other country except in accordance with generally accepted international law standards which, *inter alia*, require payment of prompt, adequate and effective compensation at the fair market value of the expropriated properties.

Free Transfer: Neither party may prevent an investor from transferring profits, earnings from an investment, or sales and liquidation proceeds (with only limited exceptions relating, for example, to limitations on dividend payments set by bankruptcy laws.)

Exceptions

Certain measures are excluded, notably those involving transportation services. The provision of financial services (except certain insurance measures) are covered elsewhere in the Agreement.

In general, existing measures are grandfathered, such as the existing U.S. laws restricting foreign investment in such fields as atomic energy and communications and the Canadian laws restricting foreign investment in communications. Those measures may not be made more restrictive.

The oil and gas and uranium mining industries were subject to published policies under the Investment Canada Act prior to October 3, 1987; the application of these policies and of the thresholds of the Agreement to these industries is to be clarified by an exchange of letters.

Liberalization of Entry and Exit Restrictions

The Agreement does achieve major liberalization of Canada's Investment Canada Act, which is Canada's principal mechanism for regulating investment into Canada and, *a fortiori*, sales of Canadian businesses to foreign investors.

Canada's threshold for review of direct acquisitions by U.S. investors is raised to C$150 million (in constant 1992 Canadian dollars) after three years from the date of entry into force of the FTA.

Canada will no longer review indirect acquisitions after the end of that three-year period.

Canada also will apply these higher thresholds to an acquisition by a foreign investor when a U.S. investor seeks to sell its Canadian business.

Canada will offer to buy, at a fair open market price (determined by independent assessment) any business enterprise in Canada in the cultural industry which Canada requires be divested when reviewing an indirect acquisition. If, for example, a U.S. firm seeks to buy another U.S. firm with a Canadian subsidiary in a cultural industry, Canada may require the new owner to divest the cultural subsidiary to a Canadian purchaser. (The FTA exempts cultural industries generally from the Agreement, and therefore from the Chapter.)

Canada will no longer impose certain trade-distorting performance requirements under the Investment Canada Act. These are requirements to export, substitute local production for imports, source or purchase locally, or achieve specified domestic content.

PART FIVE: FINANCIAL SERVICES

Chapter Seventeen: Financial Services

This is the first U.S. bilateral agreement covering the entire financial sector. It removes essentially all existing discrimination faced by U.S. financial institutions operating in Canada, allows the flexibility to acquire Canadian financial services firms, improves access between our markets, and allows financial firms on both sides of the border to compete on a more equal basis. Canadian financial institutions will continue to enjoy the current treatment and open access they now receive in the U.S. financial market.

The Agreement covers all current and future laws, regulations, and practices relating to financial institutions in both countries. Financial institutions include commercial banks, investment banks, trust and loan companies, savings-and-loan institutions, certain activities of insurance companies, and other institutions so designated under the laws of each country. (Financial services offered by nonfinancial institutions and insurance services are covered elsewhere in the Agreement.)

The domestic assets of foreign bank subsidiaries operating in Canada (the "closely held" or Schedule B banks) are currently limited to 16 percent of all domestic assets of the Canadian banking system. Foreign bank subsidiaries also face individual capital limits and other restraints such as the sale of loans to the parent bank. Under this agreement, U.S. commercial bank subsidiaries will be exempt from the current restrictions on market share, asset growth, and capital expansion, in the same way that Canadian banks are free from these restraints. U.S. commercial banks will also be allowed to establish or acquire securities firms or federally-regulated Canadian insurance and trust companies, again in the same manner as Canadian banks.

Under the current proposals for financial market reform in Canada, foreign insurance companies have perhaps been the most disadvantaged because of the so-called "10/25" rule. This prevents a nonresident from acquiring more than 10 percent ownership of a Canadian insurance company, or trust and loan company; total nonresident ownership is limited to 25 percent. Under the

Agreement, U.S. insurance firms will now receive the same rights as Canadian insurance companies to diversify in the financial sector by establishing or acquiring federally-regulated insurance companies, trust companies, Schedule B banks, or securities firms.

While Ontario, Quebec, and other provinces have liberalized their securities markets and opened them to foreign investors, the federal government implemented a policy of reciprocity which has held up the applications for entry by U.S. securities firms and banks. Under the Agreement, these applications will be reviewed on a prudential basis, just as for Canadian firms, rather than on a reciprocity basis. U.S. securities firms established in Canada will have the ability to diversify through a holding company structure into other financial activities such as banking and insurance.

Under the Agreement, the U.S. also made a number of specific commitments, although there were no national treatment barriers in the United States to eliminate. The U.S. agreed to guarantee the right of Canadian banks to retain their multi-state branches that were grandfathered under the International Banking Act of 1978. If the Glass-Steagall Act, which separates commercial and investment banking in the U.S., is amended, the U.S. will extend these benefits to Canadian financial institutions in the U.S. Such guarantees have never before been extended to any other country.

The U.S. responded to Canadian concerns regarding the treatment of their banks and securities firms which merge in Canada, but have operations in the U.S., by agreeing to allow Canadian banks (as well as U.S. and other foreign banks) in the U.S. to underwrite and deal in debt obligations fully backed by Canada or its political subdivisions. This is a new power that is consistent with the existing ability of banks to underwrite and deal in securities of the U.S. Government and its political subdivisions, yet does not undermine the basic tenets of the Glass-Steagall Act.

The new power enables Canadian firms to take advantage of liberalization in Canada, while retaining the most important securities activities in the U.S. One of the side effects of this new power will be a direct benefit to the Canadian federal government, the Agent Crown corporations, the provincial governments, and the municipal governments in Canada. Since, as a result of the agreement, their debt will be underwritten and traded by more firms in the U.S., it offers the potential for a wider, deeper market and, therefore, lower borrowing costs.

In addition to these specific commitments, both the U.S. and Canada have made general commitments. The U.S. has agreed to continue the current treatment provided to Canadian financial institutions established in the U.S. as long as Canada continues to liberalize its financial markets and to extend the benefits to U.S. financial institutions established in Canada. Canada has made an analogous commitment. The Agreement establishes a formal consultative mechanism between the U.S. Department of the Treasury and the Canadian Department of Finance to oversee this liberalization and deal with any other financial services issues.

PART SIX: INSTITUTIONAL PROVISIONS

This part establishes procedures for general dispute settlement and the special arrangements for antidumping and countervailing duties.

Chapter Eighteen: Institutional Provisions

The Agreement provides for a consultative mechanism to avoid disputes and resolve any disagreements quickly and easily, with provisions for use of binational panels of independent experts for unresolved disputes.

The Canada-United States Trade Commission is established to supervise the implementation of the Agreement and to resolve disputes on all matters except financial services, antidumping and countervailing duties. The Commission will be composed of Cabinet-level representatives of both governments and will operate by consensus.

Either government may request consultations and will attempt to avoid or resolve disputes through consultations. If consultations are unsuccessful, either government may request a meeting of the Commission. The Commission may use a mediator or draw on expert advice in seeking a bilateral settlement. If not resolved in this manner, the Commission may agree to refer the matter to binding arbitration or a panel can be established at the request of either party.

A panel will be appointed from a roster maintained by the Commission. Two panelists will be appointed by each government and a fifth, the chairman, will be jointly agreed, selected by the other four, or chosen by lot. The panel, after hearing the arguments of both sides, will report its findings and recommendations to the Commission. If either side believes the panel has erred, it may present written objections to the panel, which may reconsider and revise its final report.

After receiving the panel's final report, the Commission will agree on the resolution of the dispute, whenever possible removing the nonconforming measure rather than paying compensation. If the Commission cannot agree and a government believes its fundamental rights or benefits under the FTA are being impaired, that government may withdraw equivalent benefits from the other.

Chapter Nineteen: Binational Dispute Settlement in Antidumping and Countervailing Duty Cases:

The U.S.and Canada will continue to apply their own national antidumping (AD) and countervailing duty (CVD) laws to goods imported from the other country. In such cases, independent binational panels acting in place of national courts will expeditiously review final AD and CVD determinations to decide whether they are consistent with the AD or CVD law of the country that made the determination.

The panel procedure -- combining independent review and judicial standards with an FTA-created forum and a tight schedule -- will allow quick resolution of AD/CVD issues between the two countries without unnecessary bilateral trade friction, yet preserve the rights of injured companies to obtain relief from unfair trade practices. The panel mechanism will remain in place for up to seven years, while a bilateral working group attempts to develop new approaches to unfair pricing and government subsidies that would ensure effective discipline over unfair trade practices and minimize unfair trade disputes within the new free trade area.

Under the FTA's panel procedure, independent binational panels will review final AD and CVD determinations by the relevant administrative agencies of the U.S. and Canada. In one FTA country's AD or CVD case involving a product from the other FTA country, panels would substitute for national courts unless, in a particular case, no party preferred panel to court review. Panel decisions would be binding as a matter of international law with respect to the particular matter reviewed. This system of review would apply to final determinations made by an administrative agency after the date of entry into force of the Agreement. It will not affect either country's judicial review of AD/CVD cases concerning imports from third countries.

In the U.S., the Department of Commerce makes final dumping or subsidy determinations in AD/CVD investigations and reviews of AD/CVD orders, and the U.S. International Trade Commission makes final determinations in AD/CVD investigations as to whether a U.S. industry has been injured. These determinations in a U.S. case involving goods from Canada, and Canada's parallel determinations in a Canadian case involving goods from the U.S., will be subject to panel review. This symmetry in the panel review process will enhance the rights of U.S. producers and exporters, since judicial review of some Canadian dumping and subsidy findings is not now available.

The panels will review final AD/CVD determinations solely to determine, based on the administrative record, whether the relevant administrative agency applied its national AD/CVD law correctly. The panels will employ the same standard of review and the same general legal principles as would a domestic court. If a panel finds that the administrative agency applied the law correctly, it will affirm the determination. Otherwise, it will send the case back for a corrected determination.

Although formally only the two governments may invoke the panel review process, the governments will automatically trigger panel review at the request of any person who otherwise could have challenged the determination in court. Parties to the case or their lawyers will argue their positions before the panel, as they would before a court. Sensitive business information will be protected against unlawful disclosure in the panel review process.

Panelists will generally be selected from a roster to be developed by the two governments. Individuals on the roster will be U.S. or Canadian citizens chosen for objectivity, reliability, sound judgment, and general familiarity with international trade law. To ensure impartiality, roster members, with the exception of judges, may not be government officials. Individual panels will have five members, the U.S. and Canada each appointing two. The fifth panelist will be chosen by agreement between the two governments, among the four panelists, or by lot from the roster. Because panels will be performing a judicial-like function, a majority of the panelists including the chairman must be attorneys.

The two governments expect the panel system to work smoothly and effectively. As a safeguard against an impropriety or gross panel error that could threaten the integrity of the process, however, the FTA provides for an "extraordinary challenge procedure." In carefully defined circumstances, either government could appeal a panel's decision to a three-member committee of U.S. and Canadian judges or former judges. The committee would make a prompt decision to affirm, vacate, or remand the panel's decision.

The Agreement also establishes a procedure for advisory panel review of amendments to U.S. or Canadian AD or CVD laws enacted after the FTA enters into force. The two governments will consult about any proposed AD/CVD amendments applicable to the other country's goods. If one country changes its AD or CVD statutes, the other government may request that a panel be established to give an advisory opinion on whether the amendment is consistent with the GATT and the FTA.

If the panel views the amendment as inconsistent with the GATT or the Agreement and recommends modifications to eliminate the inconsistency, the two governments will consult to reach a solution, which could include seeking remedial legislation. If no agreement is reached or remedial legislation agreed on is not enacted, the complaining government may enact a comparable amendment to its AD/CVD law or terminate the Agreement upon 60 days' written notice.

PART SEVEN: OTHER PROVISIONS

Chapter Twenty: Other Provisions

Provisions which did not fall logically into other chapters appear here. Included are some particular sectoral issues, as well as some general rules affecting the overall Agreement.

Softwood Lumber

The 1986 Memorandum of Understanding (MOU) on Softwood Lumber is grandfathered. The MOU resolved a countervailing duty case brought by the U.S. softwood lumber industry against Canada's lumber exports. Canada agreed to apply a 15 percent export tax on lumber until such time as the provincial stumpage pricing practices were altered.

Plywood

Canada will decide by March 15, 1988 whether to allow the use of U.S. standard C-D grade plywood in housing it finances. If so, U.S. tariff concessions on plywood and particleboard will begin to be implemented on January 1, 1989. If not, a panel of experts will examine the issue and the governments will consult on how to implement the tariff concessions.

Culture

It has been the policy of Canadian governments to promote cultural activities with the goal of fostering Canada's unique cultural heritage. Some of these measures have had trade effects and an adverse impact on U.S. commercial interests.

The U.S. recognizes the importance to Canada of maintaining its cultural identity. At the same time, however, the U.S. wants to ensure that Canadian cultural policies do not constitute a discriminatory and unnecessary barrier to U.S. trade.

Certain "cultural industries" are exempt from the provisions of the FTA. This allows either country to maintain programs that would otherwise be inconsistent with the Agreement. However, the other country retains the right to retaliate with measures of equivalent commercial effect whenever the cultural exemption hurts that country's commercial interests. The right to take countermeasures is not subject to prior invocation of the Agreement's dispute settlement provisions.

Cultural activities exempted from the FTA include the publication, sale, distribution or exhibition of: books, magazines, and newspapers; film and video recordings; audio or video music recordings; and also radio, television and cable dissemination. Of course, tariffs will be eliminated on all these products.

In addition, Canada has agreed to alter a number of practices that discriminate against U.S. businesses. These new steps include elimination of a print-in-Canada requirement for tax benefits and increased copyright protection for the retransmission of commercial broadcasts.

Other Provisions

The two governments agreed that if either takes trade actions to counteract a serious deterioration in its balance-of-payments position, it will do so consistent with its rights and obligations under the GATT, the International Monetary Fund and the Organization for Economic Cooperation and Development.

The precedence of the 1980 tax convention is stated because the Agreement takes precedence over other agreements unless specified.

The standard GATT national security disclaimer is adopted, except for energy and government procurement. For energy, there is a more limited national security provision specified in the energy chapter. For government procurement, the GATT Government Procurement Code provision is adopted.

The establishment of government monopolies is expressly permitted, but it must be done in a way that does not violate the principles of the Agreement.

The Agreement states that if measures not expressly prohibited are deemed nevertheless to nullify or impair benefits reasonably expected under the Agreement, dispute settlement can be invoked.

PART EIGHT: FINAL PROVISIONS

Chapter Twenty-One: Final Provisions

The two governments agree to exchange necessary statistical information and to publish information to facilitate implementation of the Agreement. The Agreement will become effective January 1, 1989. It can be amended by mutual agreement and can be terminated by either party with six months' notice.

For Further Information, Contact:	Area Code 202
The Office of the U.S. Trade Representative	
Office of Canada	395-5663
Office of Public Affairs	395-3230
Department of Commerce	
Office of Canada	377-3101
Office of Public Affairs	377-3808
Department of Agriculture	
Office of International Trade Policy	382-1338
Office of the Press Secretary	447-4623
Department of the Treasury	
Office of International Trade	566-8107
Office of International Investment	566-5811
Canada Desk (Financial Services)	566-2747
Department of State	
Bureau of Economic and Business Affairs	
Office of Trade	647-1718
Office of Public Affairs	647-1942
Department of Labor	
Office of International Economic Affairs	523-6096
Office of Public Affairs	523-9711

Chairman **GIBBONS**. Thank you, sir.

Before I get to my first question, I want to lay a little predicate for it and try to explain some of my position here. I want to ask you about a time schedule, in your own mind, for the ratification of this agreement. I recognize that my chairman does not like these time schedules too well, but I want to explain why I think it is necessary in this agreement.

The Canadian Government is in its fourth year in power. As I study Canadian history, no government that went into its fifth year and then was thrown into election could ever sustain its position. Now I do not want to get involved in Canadian politics at all, but I do want to get this agreement ratified if, when it has all been examined, we find it is desirable to ratify it.

I am afraid that the closer we get to mandatory Canadian elections, the more difficulty there will be in the ratification process on the Canadian end.

With that in mind, that we must first find it desirable for the United States to ratify this agreement, and we thoroughly understand it, what do you think is a reasonable timetable in trying to get this agreement ratified by the Congress?

Secretary **BAKER**. Mr. Chairman, if I may, let me say that we share your view with respect to the importance of moving as expeditiously as we can move. We think it is important from the standpoint of ratification in Canada, as you point out. We think it is important from the standpoint of ratification, as well, in the United States.

I think it is the position of the administration that we would be prepared to move as expeditiously as would be convenient and satisfactory to the relevant committees of the Congress. That is the position we have tried to take in our discussions with the chairman and with Senator Bentsen.

Chairman **GIBBONS**. That is a fair position. I recognize that we have a large agenda on the Ways and Means schedule this year and on the congressional schedule. We have got first, in priority, the omnibus trade bill. We tentatively hope to finish that by or before the recess for Easter.

I have just come from a subcommittee conference on that and it is tough work, I want to tell you. We have got lots of things in the Congress to work out.

But I would also like to get this one ratified rapidly so that we do not lose the years of time it has taken to get this agreement this far. This is not something that has just happened in the last few years. It is something that has taken the parties on both sides of the border generations to come to the conclusion that it ought to be done and I do not want to lose that opportunity.

I am afraid that if we do, it will be more generations before we can get this far again.

First of all, there is the major trade bill. Secondly, on the time schedule, is this agreement implementing bill. And then, with all the interest that we have in the Caribbean, I would like to move the Caribbean Basin Initiative II.

Mr. Baker, I spoke to the President about it the other day. You were not there, but I did not receive a negative response from him. I spoke to other members of the administration down there about it. The Speaker has told me that he would like to move on the Caribbean Basin Initiative II here this year.

So we have got a full plate ahead of us and I do not want any of these to get lost in the shuffle, particularly this one.

Mr. Rostenkowski, would you like to remark?

Chairman ROSTENKOWSKI. I have no questions. I just take this opportunity to congratulate my good friends Ambassador Yeutter and Jim Baker on the grand job that they did in negotiating this. I know that the midnight oil burned and the telephones rang in the early morning hours.

I am encouraged particularly by the attitude that the leadership here in the House and on the Senate side have with respect to moving this legislation along. I think that we are going to have to be prudent legislators and we are certainly looking forward to the cooperation of the administration.

We will certainly keep this on a fast track and, if all goes well, I am sure that we will have both the trade bill and this Canadian Free Trade Agreement on the desk of the President in a very short while.

Thank you very much.

Chairman GIBBONS. Mr. Crane?

Mr. CRANE. I would just say I salute our distinguished chairman of the full committee for the reassurances of the time table because I think it is important.

Mr. Chairman, I do not know if you are aware of it but our biggest export market for the State of Illinois is Canada. So we in Illinois have more than a casual interest in seeing this agreement consummated as swiftly as possible. It is not that that is a parochial market, as everyone knows, being our biggest trade market. It is beneficial to all of us.

So I simply, again, want to congratulate the Secretary and our distinguished trade representative, Mr. Yeutter, who is valiantly fighting for Illinois' interests out there.

Chairman GIBBONS. Mr. Jenkins?

Mr. JENKINS. Thank you, Mr. Chairman and thank you, Mr. Secretary and Mr. Yeutter for your statements.

This agreement has basically been sold in my part of the country as a true free trade agreement and generally I am in support of that concept. But as I begin to look at the summaries of the agreement, I recognize that there are many areas that are still left with considerable restrictions, I assume from both sides. It probably is mislabeled as a free trade agreement. I want to ask a few questions with what time I have today.

Various poultry and egg producers from the southeast, including my district, are concerned with the agreement because they did not feel, first of all, that they were really consulted too much during the negotiation process. They feel that the agreement might be harmful to their interests since it would phase out the tariff protection for U.S. producers. I am speaking primarily in the egg area.

As I understand the agreement, from reading it, Canada would maintain its free access to the U.S. market while U.S. producers would be subject to a Canadian quota that allows exports equal to about 1.5 or 1.6 percent, I believe, of the total Canadian production to be shipped. Their supply management system apparently is untouched by the agreement.

I am trying to find the fairness in this agreement, where we are limited to 1.6 percent of their market and our market is totally open. Is that correct, in this particular area?

Ambassador **Yeutter**. That is not quite correct, Congressman Jenkins. Let me make a couple of comments and then, if there is anyone here from the Department of Agriculture that would like to expand on that, I will be glad to have them do so because they negotiated that part of the agreement.

Mr. **Jenkins**. I would be delighted, because I have been trying to sell this to my egg people as a free trade agreement, and then they tell me that we are limited to 1.6 percent of their total production.

Ambassador **Yeutter**. This is one of the cases that I alluded to a little earlier, Congressman Jenkins, in saying that the situation was improved but not all the way to a free trade arrangement, as you suggest. This is freer trade, but not free.

In terms of the access to the U.S. market by Canadian egg producers is essentially unchanged except, as you point out, for the gradual elimination of the tariffs on all products coming our direction as well as U.S. egg products going the other direction. So eggs and egg products going both ways will have tariffs eliminated.

The Canadians will not eliminate their quota program on eggs and egg products. It will continue in effect, just as will some of our agriculture programs, dairy for example.

But we did negotiate an increase in that quota, so we will be able to sell more eggs in Canada as a result of the FTA than we would have without the FTA. But we will not be able to sell without any kind of constraints.

Our evaluation, that is the evaluation made by the Department of Agriculture, is that this will be a net plus to us for the egg industry. I hope that turns out to be correct. In other words, they believe that the balance of trade will move in our favor as a result of the FTA.

I know that there are some of your constituents who wonder about that, but I hope we can also convince them that that is the case, that the terms of trade will move in their favor. Not all the way, as we had hoped, so that we could have free and open access to the Canadian market, but a better situation than we have now.

Mr. **Jenkins**. I understand the reduction in tariffs from both sides, but why only open up to 1.6 percent of their market while Canada maintains a quota system? If we are really trying to eliminate quotas, it appears that there is some inequity here.

I get accused of being for quotas so if we are going to have a free trade agreement, I really want to see the elimination of quotas.

Ambassador **Yeutter**. I do not like quotas either, but we retained some quotas ourselves. As I indicated, we still have quotas on a number of our agricultural products and we did not remove those in this negotiation.

We do have an opportunity to remove the quotas in the Uruguay round and we did deliberately leave a lot of these agricultural issues for the Uruguay round because they are global issues, rather than bilateral ones.

Mr. **Jenkins**. What quotas have we maintained, Mr. Yeutter?

Ambassador **Yeutter**. All of the dairy quotas, for example. All of the sugar quotas, all of the textile quotas.

Mr. **Jenkins**. We did not have any textile quotas with Canada.

Ambassador **Yeutter**. I am sorry, that is right.

But sugar, in the agricultural areas, sugar and dairy products for sure. I am sure there are others but—I will list them for you if you would like.

Secretary **Baker**. Congressman, could I just say that I think the key point here is that there is an inequity and it continues. It is simply not as gross an inequity as it is without this agreement. So at least it is a step in the right direction in this particular area. Not as much as we would have liked, not as much as your constituents would have liked.

Mr. **Jenkins**. It is just very difficult to explain to egg producers that they are limited to 1.6 percent of the Canadian market, while those same products coming into our markets are totally open. And it is very difficult.

Let me switch just a moment. The chairman of the textile caucus, who is not a member of this committee, had asked me to make inquiry concerning tariff rebates. I know you are already familiar with this because I have just spoken to Peter a few moments ago about the rebate. That seems to fly in the very face of this agreement.

I would like for you to comment on that, and as to what we can anticipate from this and what is being done to prevent this type of agreement from occurring.

Ambassador **Yeutter**. As you probably know from some of the press reports over the last few days, Mr. Jenkins, there have been discussions on that subject, because of reports from Canada that a proposal in this area was anticipated or was about to emerge. We have not yet seen a Canadian proposal in this area. To our knowledge, nothing has been finalized.

There is no point in evaluating hypotheticals, of course, so we will wait and see what, if anything, emerges. Obviously, we have the same concerns that you do with respect to anything in this or other areas that might be violative of the basic spirit of the agreement. But we will have to judge that when the time comes and not just on the basis of hypothetical proposals.

Mr. **Jenkins**. Either country has the right to initiate waivers up until June.

Ambassador **Yeutter**. Yes, we do——

Mr. **Jenkins**. Or until Congress acts, I believe.

Ambassador **Yeutter**. Yes. But we did provide language in the agreement itself, and we also had an exchange of letters between Canadian Trade Minister Carney and myself to the effect that both countries would attempt to constrain themselves in taking undue advantage of that time table, and that we would both try to honor the spirit of the agreement between now and time of implementation.

Mr. **Jenkins**. The chairman of the caucus had spoken to me yesterday, and apparently that is of tremendous concern. And I am sure that people from Canada are aware of this. And I guess they are looking for some assurance that this matter has been resolved before 100 Members decide to go their own way.

Ambassador **Yeutter**. We are well aware——

Mr. **Jenkins**. If you are reading me properly.

Ambassador **Yeutter**. Yes. We are well aware of the congressional concerns because I have already had correspondence with a number of Members of Congress. And your concerns and our concerns are identical.

Mr. **Jenkins**. Let me ask one further question. If the United States found it necessary to impose an import fee across the board in years to come, would Canada under the terms of this agreement, would they be excluded from such a——

Ambassador **Yeutter**. Any import fee?

Mr. **Jenkins**. Yes, just a general import fee.

Mr. **Pickle**. Will the gentleman yield? Are you talking about an oil import fee?

Mr. **Jenkins**. Any.

Ambassador **Yeutter**. Any import fee.

Mr. **Jenkins**. Across the board, applying to everyone.

Ambassador **Yeutter**. I would like to ask somebody from our general counsel's office to——

Mr. **Jenkins**. I am wondering if it could be excluded or would be excluded, and how would that comply with GATT generally?

Ambassador **Yeutter**. This is Mr. Roh from our general counsel's office and I think he can properly answer.

Mr. **Roh**. The answer is, yes, we would have to exempt Canada pursuant to the FTA. And that is consistent with the GATT because this is a free trade area under GATT, and there is an exception in GATT for free trade areas.

Mr. **Jenkins**. So we could except any country that we had a free trade agreement with?

Mr. **Roh**. Yes, free trade agreement under GATT, yes.

Ambassador **Yeutter**. That is correct.

Mr. **Jenkins**. I think my time is up. Thank you.

Ambassador **Yeutter**. That does not, of course, evaluate the merits of whether we should have an import fee.

Mr. **Jenkins**. I am not proposing one, at least not yet. [Laughter.] I am just inquiring as to what the likelihood would be. Thank you.

Mr. **Pickle**. Mr. Jenkins would you yield on that?

Chairman. **Gibbons**. Mr. Downey and then to Mr. Schulze. Mr. Downey?

Mr. **Downey**. Thank you, Mr. Chairman. I also want to add my voice to those others who have congratulated you on this effort. I am not normally a fan of this administration's foreign policy, but in the area of trade I think you deserve high marks for your effort in Israel and here. And I think it is something that lays the groundwork for future agreements of this type with other countries which will, as Secretary Baker said, I think enhance everyone's economic position.

There are three areas that I would like to discuss with you. One, I would like to ask some questions along the order of Mr. Jenkins about an oil import fee and the potential that at some point if one is ever enacted what we would do in terms of the Canadians.

Second, I would just like to make a brief statement about one of the areas of concern I have about the television, motion picture and recording industry. Nearly a year ago, the Canadian minister of culture announced a plan for legislation that would restrict the movement of U.S. movies, television and home video in Canada.

No similar restriction applies now or would ever apply to Canadian products in the United States. This Canadian restriction would have a devastating impact on the U.S. motion picture industry. And it is impossible to predict where such trade legislation might lead worldwide if other trading partners were to adopt the proposed Canadian model for treating films, television and home videos.

I understand that the discussions among representatives of the U.S. Government and the U.S. industry and Canadian Government were not successful in obtaining assurances that this Canadian proposal would be extinguished. Nevertheless, it was deemed necessary for the negotiators to reach an agreement with the Canadians which completely exempted cultural industry, including the motion picture industry from its coverage.

I know what a great challenge our negotiators face, and I hasten to point out that I am not criticizing their hard work. I understand what it is like to reach an agreement and what compromises are necessary. However, I am very uneasy that in this agreement the Canadians, for strong domestic political reasons got off scot-free from any commitments in an area of trade where they have already indicated they intend to take action damaging to the United States.

I also understand that negotiations with Canadians are still underway on these issues outside of the free trade agreement area. And I would urge the administration to use all of its good offices to seek a resolution to this problem.

Now in the meantime, and for the future as we begin our consideration of the agreement, necessary implementing legislation and statements of administration action, I would appreciate it if I could work together with the administration and other members of this committee to find a way to meet this threat to the U.S. motion picture industry in Canada. I believe that it has not been properly addressed. In fact, I think that there is some concern that we in the Congress would not go forward with our approval of the free trade agreement unless this unfinished business is resolved.

Now I only speak for myself, but I know Mr. Russo and other members of this subcommittee share this concern very deeply. And it is our hope that we can work with you as these delicate negotiations proceed.

I had the good fortune to be in Stockholm recently with the former Prime Minister of Canada, Mr. Trudeau. And I discussed at length with him this whole question, and I got a very interesting and stern lecture about cultural integrity and the like. And I appreciate what it is like to live next to the United States. I think I can empathize with that. But I am not sure that the plans that I have seen emanating from the Canadians are anything more than excuses to prop up some in their own motion picture industry.

So it is my hope that as we go forward here we can work out the necessary arrangements for the implementing legislation.

I want to also ask you about this oil import fee that Mr. Jenkins talked about. I believe that there are serious competitive distortions that could occur if Canada is exempt from an oil import fee. Section 902 provides for consultations to avoid these distortions.

And what I would like to know from either the Secretary or from you, Mr. Yeutter, is how we would avoid competitive pricing distortions should, for instance, the Canadians decide that they wanted to market heating oil in the United States themselves. If they had a competitive price advantage this would be of, I think, major concern to those of in the mid-Atlantic and New England States. If you could talk about how this process might work, I would appreciate it.

Ambassador **Yeutter**. Let me try that if I may, Congressman Downey. First of all—and this is a bit of a followup to the question by Congressman Jenkins—if we were to have an oil import fee, though we could comply with the free trade arrangement by exempting Canada, the fee itself would very likely be violative of the GATT, and we would be in trouble internationally for having one at all. And as you well know, the position of the administration is in opposition to such a fee.

But just assuming for purposes of argument that the Congress chooses to ignore its GATT obligations or find some creative way to resolve that dilemma, how would we handle it under the free trade arrangement. And if the exemption of Canada resulted in the kind of distortion you outline, what could we do?

The answer does come out of section 902 which calls for a consultative process. How that will evolve, Congressman Downey, is a bit difficult to determine because we are obviously plowing new ground here. But certainly the intent of that provision is that the two parties would consult, confront the issue and attempt to work out an equitable solution. Now what that might be is really difficult to discern.

Mr. **Downey**. Mr. Ambassador, can I interrupt you at this point?

Ambassador **Yeutter**. Sure.

Mr. **Downey**. Would it be appropriate if we were to suggest to you that historic import levels and matters like that could be part of any implementing language so that we would not see one side or the other take advantage of a situation where there would be competitive price advantages. I mean, if we could suggest some language to you with respect to how both the timeliness of the procedure and possibly other ways to look at this.

Ambassador **Yeutter**. We will be glad to evaluate language that you might propose. We have to be careful, obviously, about creating more problems than we solve.

Mr. **Downey**. I understand.

Ambassador **Yeutter**. But certainly.

[Mr. Downey subsequently submitted the following questions to Ambassador Yeutter:]

QUESTIONS FOR AMBASSADOR YEUTTER ON OIL IMPORT FEE?

1. What is the extent of the surplus refining capacity that exists in Eastern Canada that could be utilized if an oil import fee were imposed? What is the refining capacity in Eastern Canada that has been shut down in the past seven years which could be reactivated?

2. The Agreement recognizes that competitive distortions could occur if only Canada is exempt from an oil import fee. Section 902.4 provides for consultations to avoid these distortions. How would these consultations avoid competitive or pricing distortions? How quickly would they respond?

3. What would happen if the consultations fail to arrive at a timely solution? Does the U.S. have any other recourse to prevent a massive influx of Canadian petroleum products that could injure competition in the Northeast?

4. I believe that the concept of consultations in this instance is a good one. But, would not a more specific time frame and a particular goal for these consultations provide much greater assurance that distortions would actually be avoided?

5. Would the Administration have any objection to an implementation arrangement that suggests the consultations should either establish a fee free quota based on recent historical import levels, or some other mutually acceptable solution, within sixty days? In this way, the consultations would be aimed toward a specific goal and if that goal were inappropriate the parties could be required to agree to an alternative mechanism within a specific time frame.

RESPONSES TO DOWNEY QUESTIONS:

1. What is the extent of the surplus refining capacity that exists in Eastern Canada that could be utilized if an oil import fee were imposed? What is the refining capacity in Eastern Canada that has been shut down in the past seven years which could be reactivated?

A. This is not a simple question. At any point in time, the degree of installed refining capacity that might be considered "surplus" is a function not only of current and anticipated short-term utilization of "nameplate" capacity for normal demand but also of crude oil availability, downstream processing capacity, storage and terminalling capacity, and general condition of refinery equipment. Refinery capacity utilization normally varies seasonally according to swings in product demand mix. Since a given barrel of crude oil of a specific grade (gravity, sulfur content, metals content, etc.) will yield a range of products from residual fuel oil and asphalt at the heavy end to gasoline and propane at the light end, a refiner must have a market outlet (or surplus storage capacity) for all parts of the barrel, not just those where there appears to be an immediate market opportunity. The lack of a market for some of these coproducts would restrict the refiner's ability to increase crude runs to take advantage of possible markets for the other products.

In addition, even if the entire yield from the refining process could be disposed of, refineries are not generally designed or maintained to operate at full capacity utilization for extended periods of time. Typical maximum rates for sustained utilization of "nameplate" capacity are 90 percent for crude oil distillation units and 95 percent for downstream units, such as catalytic cracking, reforming, hydrodesulfurization, and alkylation.

Thus, even if one were to look simply at current inctalled refining capacity in Eastern Canada and current utilization rates, it would not necessarily follow that the difference could be considered "surplus." The question is even more difficult to answer if one is referring to some hypothetical future point in time.

Nevertheless, as a rough measure of current refining capacity availability, it would appear that approximately ___ percent of Eastern Canada's installed capacity of 1,252 thousand barrels per day (based on Oil & Gas Journal survey, published December 28, 1987) is currently being utilized, but it is not clear that the remaining ___ thousand barrels per day could be used to produce refined product for export to Northeast U.S. markets in the event of a U.S. oil import fee.

The question regarding shutdown capacity is even more complicated, because its availability, even if it were still physically in place, would depend a great deal on its condition and on the condition of the infrastructure which is necessary to permit its use, such as pipeline connections, storage facilities, and the like. According to the Oil and Gas Journal, Eastern Canada had about 1,800 thousand barrels per day of installed crude oil distillation capacity as of January 1, 1981. How much of this capacity might still exist and have the potential to be made available is at best a matter of speculation (unless one were to send engineering teams to the sites of these refineries), and its availability at some future hypothetical date is even more speculative.

2. The agreement recognizes that competitive distortions could occur, if only Canada is exempt from an oil import fee. Section 902.4 provides for consultations to avoid these distortions. How would these consultations avoid competitive or pricing distortions? How quickly would they respond?

A. It would be difficult to specify in advance exactly how we would eliminate bilateral trade distortions arising from an oil import fee. There are several possible ways of dealing with potential problems that could occur. Any solution would have to be mutually agreeable, and our initial proposal might not be the same as the Canadians'. We would have to work this out at the time, when we had the specifics of the fee or other third-country measure in front of us.

As far as timing goes, obviously we try to resolve things as quickly as possible, ideally in advance of actually taking any measures which could distort our bilateral trade. Canada would also have a major incentive to resolve problems quickly, because distortions could also occur in the West which would have serious adverse effects on Canada's oil supplies. Since both countries would have to agree to the solution, we would also have to get Canada to agree to any deadline, say, within 60 days of implementation. This is something we could take up with the relevant Canadian officials in the next few months as we look at the details of implementation of the agreement.

3. What would happen if the consultations fail to arrive at a timely solution? Does the U.S. have any other recourse to prevent a massive influx of Canadian petroleum products that could injure competition in the Northeast?

A. There would, in theory, be measures we could take in an emergency to prevent massive market distortions, but because, as mentioned, both countries would have a significant incentive to resolve problems as quickly as possible, it is highly unlikely that we would have to resort to any emergency, unilateral actions.

4. I believe that the concept of consultation in this instance

is a good one. But, would not a more specific time frame and a particular goal for these consultations provide much greater assurance that distortions would actually be avoided?

A. Article 902.4 was designed to deal with a broad range of possible situations, involving actions against third-country trade by either the United States or Canada, affecting either imports or exports, and applied to any of the energy commodities covered under Chapter 9 of the agreement. It would be undesirable to place explicit restrictions and requirements on the use of Article 902.4 solely because of one specific, hypothetical situation. We believe urgent situations, such as the one you are concerned about, would be handled very quickly, but in other possible situations it might be neither necessary nor desirable to try to force a solution within a specified, limited period of time. Thus, we think the flexibility inherent in Article 902.4 is appropriate for the scope of possible situations to which it might apply.

5. Would the Administration have any objection to an implementation arrangement that suggests the consultations should either establish a fee free quota based on recent historical import levels, or some other mutually acceptable solution, within sixty days? In this way, the consultations would be aimed toward a specific goal and if that goal were inappropriate the parties could be required to agree to an alternative mechanism within a specific time frame.

A. We can discuss possible ways of meeting the objective outlined in your question. It would be inappropriate to specify in advance how a specific situation should be addressed without knowing what the actual conditions affecting that situation would be at the time, and in particular it would be inappropriate to specify unilateral actions which the U.S. side might be required by the implementing legislation to take, regardless of the Canadian views on the issue. As noted in response to the earlier questions, there is no doubt that both countries would seek as quickly as possible a mutually agreeable means for dealing with trade distortions affecting both countries' oil markets as a result of a U.S. oil import fee. We believe it would probably be resolved in less than 60 days. However, unilaterally imposing such a limit, and a unilateral solution, in the U.S. implementing legislation would be inappropriate. We would be pleased to work with you and other Members of the Congress to consider appropriate means of responding to these concerns.

Mr. DOWNEY. I have one more generic question about the process that we are going through. Can any of you explain to me the difference that this agreement when ratified by the House and Senate, this free trade agreement would have from a treaty that we would send to the Senate and ask for ratification by two-thirds vote? What is the difference in law between this form of an Executive agreement and a treaty?

Ambassador YEUTTER. My understanding, Congressman Downey, is that we could have done it either way but that this fits the needs—doing it by Executive agreement fits the needs of the situation better than a treaty would, particularly because we are using the fast track procedure which calls for it going to both houses. But again, let me ask our lawyers to come up and elucidate on that.

Mr. DOWNEY. But in your minds—I mean, I have never quite understood over the last few years is the difference in international law. I mean, this is a fairly important agreement. All of us will agree that this is a critical economic question for us to face, and we do it in the form of an Executive agreement just simply because it is different.

I mean, what I would like to know is, why is not the Senate doing a two-thirds treaty arrangement here? What is the difference?

Ambassador YEUTTER. This is Judy Bello who is our Acting General Counsel.

Ms. BELLO. The answer, sir, is that there is no practical difference between doing this as an Executive agreement with legislation implementing it from the Congress and doing it as a treaty. In international terms, we are equally bound whether it be through a treaty, an Executive agreement, an exchange of letters, a memorandum of understanding. The name of the document does not matter, the question is what you have agreed to. And as a matter of international law, we will be equally bound whether this were a treaty or Executive agreement. It makes no difference.

Mr. DOWNEY. So the Senate of the United States is not unhappy, for instance, with the fact that the House and the Senate are both in the process of making this Executive agreement with the Canadian government?

Ms. BELLO. We have not heard any complaints from the Senate.

Mr. DOWNEY. I wonder if they would apply that to the START treaty that is currently negotiated. [Laughter.] I say it, and I just make this point very quickly. If there is no difference in law between an Executive agreement and a treaty, as you point out that there is not, and we are here gathered recognizing the obvious importance of this with our relationship with Canada, it would seem to me that an agreement to reduce nuclear weapons is equally—certainly possibly even more important—and that it is just a question of how these things work. I mean, the SALT I agreement was an Executive agreement. And it is conceivable that an arms agreement could also be an Executive agreement.

I just make that point because I would want to see our President's legacy as one of arms controller. I doubt that he will be able to do it if he attempts to pass an agreement with two-thirds of the Senate's vote on START. But I just offer that for you to ponder.

Thank you, Mr. Chairman.

Secretary **Baker**. Give us fast track authority, Congressman.

Mr. **Downey**. I might be interested in doing it, Mr. Secretary.

Chairman. **Gibbons**. We are plowing a lot of new ground here. Mr. Schulze.

Mr. **Schulze**. Thank you, Mr. Chairman. I, too, would like to join my colleagues in thanking you gentlemen for your presentation.

As you both know, I have long been an advocate of bilateral trade treaties, and I have had and still have great hopes for this. And I am convinced that what you have done in the long run probably will be good for international trade and good for both of the partners.

But I do have some concerns because it seems to me one of the advantages of a bilateral treaty is access to each other's markets. And I hesitate to use the word reciprocity because that has become sort of a code word for protectionism. So I have coined a new term, and that is symmetrical access. And it seems to me that what we can gain through a bilateral is symmetrical access. If we give up something, we get something for it. If we give up an advantage, we get something in another area to balance.

And I do have some questions about symmetrical access. I have questions in the cultural integrity area. I have questions about broadcasting and publishing. I have questions in the investment area, where right now there is a $4 billion-plus offer coming from Canada which would not be allowed to be made from this country that way. I want to know why we do not have symmetrical access. Why if they can make such an offer here, we could not make a similar proposal under the same conditions there.

I have a couple other questions, one particularly for Mr. Yeutter. Since last December I have been trying to get copies of studies from the ITC which have been classified. I just came from a meeting on the Toshiba situation in which I have been briefed by the CIA, the DIA, by every intelligence agency in the country and have access to information which is not known to the general public. But I cannot gain access to two ITC studies about the Canadian-USA trade agreement.

Now I do not think this should be any kind of a big deal. I will guarantee you, I will not publish it. But I think that members of this committee, if they are going to make intelligent decisions, have got to have access to everything the Government has along this line.

Why do we not stop there and you can hit some of those balls out of the park, and then I will come back with more.

Secretary **Baker**. Let me swing first if I might, Congressman Schulze, at the symmetry on investment issue that you raised. We are not going to be exactly symmetrical after this agreement goes into force, but we are going to be one heck of a lot more symmetrical than we are today. And you should not, if I may say so and with all respect—and you know it is with respect—underestimate the significance of the gains that we have made in the area of investment.

There is going to be significantly reduced screening by Canada as far as investment is concerned. Today there are some 7,600 firms that are subject to screening. The threshold is $5 million Canadian. We have negotiated a new threshold of $150 million Canadian in constant dollars. That is going to reduce the number of firms subject to screening to about 600 from 7,600; a decrease of roughly 90 percent. And after a phase-in period of just 3 years, there will be absolutely no screening whatsoever of indirect acquisitions.

I think the fact of the matter is that one of the real benefits for the United States in this agreement is in the area of investment and increased opportunities for investment by Americans in Canada.

Mr. **Schulze**. Jim, let me address that. I agree with you in the long run, that is true. But we go five, 50, 100, 150. And yet we stop at 150. And even then, we did not get anything for that. That is my problem. It is good. I am glad you got as far as you got. I am glad we go in stages and I am glad we go up to 150. But why did we not say, okay, if you want to stop at 150, then the same rules will apply on our side or something in some other area. I want to know why we did not get anything for it. I think this thing is slanted favorable to the Canadians.

Secretary **Baker**. Let me say that it is my view that we got some things for this in other areas of this agreement. And you really have to look at this agreement as a whole. It is pretty hard to compartmentalize it, particularly when you are dealing from a position, we think, of strength, as the United States is dealing from, as a country that has always been open to investment.

And frankly, we believe—this administration believes—very strongly that this is one of the fundamental reasons that we are the strongest economy in the world, and we still are, and we are twice as big as any other economy.

Mr. **Schulze**. But we are giving access to over 200 million people where we are gaining access to 25 million.

Secretary **Baker**. We invite foreign direct investment. We always have throughout our history. We say it creates jobs, it creates output, it creates technology, it creates managerial skills. It is good. We think that it would be good if Canada opened up a little bit more, too. And we were very pleased with the significant degree of expansion we got in that area.

Mr. **Schulze**. Thank you.

Ambassador **Yeutter**. With respect to your other issues, Congressman Schulze, we hope we can be accommodating there. We have no trepidation whatsoever in sharing classified information with you, and we will happily do so. Our concerns, as you know, are administrative concerns and precedential concerns in the handling of classified information.

As you probably know, we have had some discussions with the subcommittee staff with respect to how we can handle the matter, not only with respect to your particular personal interest but with respect to the interest of the subcommittee members as a whole. And I hope that sometime in the next few days we can get this all worked out so that you can have ready access to those reports.

Mr. **Schulze**. Thank you, Mr. Ambassador. I hope that that works.

Let us talk about tariffs for a minute. The Canadian tariffs are average double our tariffs, and we are going to phase those out over a 10-year period. It seems to me we have built in a disadvantage for the American exporter over a 10-year period. If their tariffs are at 100 and ours are at 50, as we phase out, we go to 40, they go to 80; we to 30, they go to 70. Their tariffs are always twice as much as ours. I think that is a disadvantage. I do not think that is symmetrical.

Ambassador YEUTTER. That is a little bit like whether the cup is half full or half empty, Mr. Schulze. We look at it as the cup filling up during that 10 years rather than emptying out. And you are correct in your literal assertion that the Canadians will continue to have higher tariffs during the period than we will, but we will gain in a relative sense because that level of protection will be diminishing and it will be coming closer and closer together as the 10 years approach.

Mr. SCHULZE. It is marvelous in 10 years, but we should have gotten something for it, Clayton. We should have gotten something for it. See, they are getting this access to this huge market, almost unlimited access. The studies show that this will increase our GNP by about one-half of 1 percent and theirs at 9 percent. That is not symmetrical. I think they have a huge advantage in this situation.

Ambassador YEUTTER. But now you are using that comparison just exactly the opposite way.

Mr. SCHULZE. You use percentages the same way. Let me go on.

Secretary BAKER. Congressman, could I just say I think we are going to get almost double each and every year of this agreement, double the reduction in tariffs that Canada is going to get.

Mr. SCHULZE. Let me get a little bit parochial. The steel industry. The steel industry is concerned about this agreement. In a letter to me recently, Clayton, you referred to the rail mill which is being built in——

Ambassador YEUTTER. Yes, I remember the exchange.

Mr. SCHULZE. Yes, in rail capacity right now the Canadians have twice what their domestic usage is. They are talking about doubling that capacity. It is also subsidized by the Government. The steel industry in the United States is concerned. The steel industry has rationalized. By rationalized, I mean reduced productive capacity; cut some hundreds of thousands of employees in an effort to consolidate and make us more competitive.

And where we are giving other nations an advantage like this, again, without getting something for it, I am greatly concerned, and the steel industry is greatly concerned.

Ambassador YEUTTER. In terms of steel, as you know, the present steel program is totally separate from the FTA and was not intended to be intermeshed in any way with the FTA. We still have all of the rights, privileges and prerogatives that we had before. The FTA does not affect this in any way.

As you well know, we have not done a voluntary restraint agreement with Canada as we have with a lot of other countries because there has been no evidence to the effect that the Canadians are subsidizing steel into the U.S. market. If that should change, we would have a rationale for a VRA. Or likewise the steel industry if it wishes could file subsidy countervailing duty cases. But the fact is, one——

Mr. SCHULZE. We really cannot do that until the plant is built and then the barn door is locked.

Ambassador YEUTTER. That is true. But that is true in all subsidy countervailing duty cases unless we want to just be blatantly protectionist, Congressman Schulze. And I do not think that is a viable proposition with this administration.

But the fact is that we have been watching the Canadian steel situation with very considerable care. And we have, in fact, just in the last few days accelerated the monitoring of that situation in a much more detailed and comprehensive way than we have done before. So hopefully that will have some effect.

And in addition to that, we have had a lot of correspondence with my counterpart on steel, as you know. And I think our Canadian friends are well aware of our concerns in that area.

Mr. SCHULZE. So we are going to have an opportunity to squeeze them a little bit more; is that what you are saying? Let me quote from a recent newspaper article which says that Canadian steel surplus has increased to 3 million tons worth almost $1 billion. We are talking about a trade imbalance.

Ambassador YEUTTER. But as you know——

Mr. SCHULZE. It is a serious figure. One that causes us great concern. We have got to look downstream and say, do we want a steel industry and what kind of shape do we want it in. And one of the things which does affect this greatly is the fact that we did not discuss any kind of an exchange rate consultation group. I know it was discussed, but it was rejected.

And it seems to me that if the Canadian dollar is artificially in imbalance to the American dollar, that we do have problems. And I am not saying that you should have reached a definitive agreement. But it seems to me there should have been some mechanism built in that if now, or sometime later we say there is a great problem here, we would at least have a method of addressing that. And perhaps Mr. Baker would like to address that.

Ambassador YEUTTER. Just before Secretary Baker does that, I would like to just make two final comments on the steel situation, Congressman Schulze. One is that certainly there is nothing that precludes the use of section 201 or the safeguards provisions of our law vis-a-vis Canada, if we have a case for doing so. Though there are some special provisions in here on safeguards, they would not be applicable to Canadian steel shipments, and so Canada could be covered in a section 201 case if it were brought.

Second, as you know, the trend in recent months of Canadian steel shipments into the United States are down. They are down to about 3 percent now of the U.S. market.

Mr. SCHULZE. Clayton, I have seen those figures and I know that those on a percentage basis are down. But you do understand that that does not include any of the steel included in automobiles. All we are quoted is straight steel figures. If you took the amount of steel that is in automobiles, those figures would go right off the ceiling.

Ambassador YEUTTER. Yes, but you know too that that brings on an immense can of worms if we try to——

Mr. SCHULZE. Steel is steel, whether it is in plate or whether it is in an automobile. Now perhaps Secretary Baker would like to address the exchange——

Ambassador **Yeutter**. Now you are calling for a multifiber arrangement in steel, Congressman Schulze.

Secretary **Baker**. With reference to your question on exchange rates, it is our view that exchange rates of the major industrialized countries are more appropriately dealt with in a multilateral context. Canada, as you know, is a member of the Group of Seven countries.

Exchange rates reflect overall developments in an economy relative to all of its trading partners. We regularly consider the question of exchange rates in the context of the economic policy coordination process that the Group of Seven goes through from time to time, and that the various summit agreements go through. We think that is a better fora in which to deal with the questions involving exchange rates between major industrialized countries.

I might also point out that over the past several years, when the U.S. dollar has risen, so has the Canadian dollar. The reverse has basically been true, when the U.S. dollar depreciated. In other words, it has really moved more in tandem. The Canadian dollar moves more in tandem with the U.S. dollar than any other Group of Seven currency.

The primary reason it is not in this agreement is because we think it is more appropriate to deal with exchange rates in the multilateral context.

Mr. **Schulze**. Mr. Secretary, is that something which will be discussed at the next Group of Seven?

Secretary **Baker**. It is discussed as a part of the normal economic policy coordination process. Routinely at Group of Seven meetings we discuss exchange rates.

Mr. **Schulze**. Thank you. I have other questions, but my time is expired.

Thank you, Mr. Chairman.

Chairman **Gibbons**. Mr. Pease. After you, Mr. Russo.

Mr. **Pease**. Thank you very much, Mr. Chairman.

I will try not to take any more time than Mr. Schulze took. [Laughter.]

The longer I stay in Congress, the more appreciation I have for the precedent setting abilities of my colleagues.

Mr. Chairman, Mr. Secretary, and Mr. Ambassador, we are delighted to have you here. I would just like to say at the outset that I was pleased to hear the statement of Chairman Rostenkowski that he approaches these hearings with an open mind. I think, in general, all of us believe that this agreement, in general and over the long run, will be good for both countries.

We do have an obligation, however, to look at specific sectors and to look at the short run as well as the long run. That is why the chairman of our subcommittee has established these hearings.

I would like to talk, as the Ambassador will not be surprised to learn, about automobiles. I am aware of and appreciative of your efforts to negotiate a 60-percent standard of preference for duty-free treatment of autos and parts. You were unable to reach an agreement on this point. Could you tell us why you were unable to reach an agreement?

Ambassador **Yeutter**. Yes, as you know, Congressman Pease, there was a discussion ad nauseam on that issue between the two sides all the way to the final hours and afterwards.

The United States would have been prepared to go to the higher percentage on that particular issue, but we could not convince our Canadian colleagues to do so. Or alternatively, had they been prepared to do so, a very high price tag would have attached to that, in terms of other concessions we would have had to have made.

In consultations with a lot of people, including our private sector, we agreed that the price was too high and that we were better off, as a nation, staying with the 50 percent rule rather than going up to 60 with that kind of price tag being involved.

Mr. **Pease**. Well, I must say there is some concern around that our Government was very eager to consummate an agreement and, knowing that, the Canadians chose to stonewall, hold out until the very end. They were pretty sure that we would give in. That might have been the case here.

Be that as it may——

Ambassador **Yeutter**. That was not the case Congressman Pease, on this or any other issue. I would submit that both sides were interested in reaching an agreement, but we had no throwaways at the end and I doubt our Canadian colleagues did, either.

Mr. **Pease**. I was told, by some of our Canadian friends yesterday, from their embassy, that the basic problem with them was the timing problem in relation to the 60 percent. They wanted to make sure that some recent assembly plants were not covered and that sort of thing. Is that your recollection?

Ambassador **Yeutter**. I would like to ask Mr. Merkin to come up, but I certainly have no recollection of that, and neither does Secretary Baker. But let me ask Mr. Merkin, who was intimately involved in those negotiations, to comment.

Mr. **Merkin**. Congressman, the tradeoff that the Canadians were prepared to make was twofold. One would have been a delayed phase-in of the 60 percent test. That is the first 5 years it would remain 50 percent and then go up 2 percent a year for the next 5 years.

In addition, and this was the point we could not swallow, they wanted to be able to extend draw back in the automotive area for an additional 5 years. The agreement, as you know, eliminates draw back the fifth year in the agreement.

The advice we got from our domestic interests were that extending draw back, which would allow Canadian auto producers to use non-United States or Canadian parts and get the duty remitted when the finished auto was exported to the United States, negated any gains we would get from going to the 60 test.

Mr. **Pease**. I see. Just in general, on the auto matter, I happened to be in Canada for a few days vacation around Labor Day of last year. I was there at the time of the provincial elections. In Ontario, there was a lot of material in the press that the Canadian auto unions were adamant that the United States-Canada auto pact not be changed in any way. They are almost paranoid about changing that, which suggests to me that they think that the auto pact advantages Canada rather than the United States.

It seems to me that going to a 60-percent standard of preference would have been a safeguard for the U.S. auto interests which we should have pressed harder to get, and which I would hope still might be worked out under some circumstances.

Ambassador **Yeutter**. It seems to me that we probably finished negotiating on this issue, Congressman Pease, at least from the standpoint of this particular exercise. There is obviously nothing that precludes us from negotiating further on these issues outside the context of the free trade arrangement, but this one was so intensively negotiated, that I think we are at the end of the road, insofar as this exercise is concerned.

Mr. **Pease**. Let me turn to another subject. The agreement says the provisions regarding the binational panel which responds to disputes over the antidumping or CDV review process "shall be in effect for 5 years, pending the development of a substitute system of rules in both countries for antidumping and countervailing duties as applied to their bilateral trade."

What do you have in mind when you talk about a substitute system of rules in these countries?

Ambassador **Yeutter**. That is a broad provision, Congressman Pease, that is intended to provide both countries with the option of looking at alternative ways of dealing with the subsidy countervailing duty challenges and the antidumping challenges of the day several years hence.

In other words, the hope would be, as the free trade arrangement evolves, the hope would be that we would reach the point where we really do not need these kinds of protections, vis-a-vis each other.

Therefore, it is conceivable that a different regime could be put in place, one alternative simply being some protections within the antitrust laws that would be adequate to ensure the fairness of trade moving across the borders between these two countries as an alternative to traditional subsidy countervailing duty and antidumping laws.

We do not know whether the situation will evolve in that manner over the next 7 years or whether we will be so close to the utopian free trade objective that that will be possible. But what we wanted to say was let us use the existing regime during the next few years and then let us take a look at where we stand in the United States-Canada bilateral economic relationship and determine if something else might appropriately be put in place.

Secretary **Baker**. Congressman, if I might just add there, it was I think the intention of both countries, when we started this exercise, that we would try and negotiate entirely new subsidy rules. That proved to be impossible, so the decision was made that we would simply keep our respective countervailing and antidumping laws in force and move to the binational dispute settlement procedure.

It is for that reason that the provision is in the binational dispute settlement procedure provision, because both countries, I think, would like to think we could move to the broader concept.

Mr. **Pease**. As I read this agreement, it appears that it contemplates going beyond just looking at it, but actually achieving it. It says if no such system of rules is agreed and implemented at the end of 5 years, provisions of this chapter shall be extended for 2 years. Failure to agree at the end of that 2-year period shall allow either party to terminate the agreement on 6 months notice.

Ambassador **Yeutter**. That is true, but you see that would imply, Congressman Pease, that we would, at that time, return to the traditional subsidy countervailing duty antidumping laws, which would not have this binational panel in it. At least, that would be the logical presumption, if the agreement were terminated.

Just to supplement what Secretary Baker said, if we do have much more discipline on subsidies and, in fact, in the next 7 years subsidies in both countries can be phased down to such a level that they are of no relevance to international trade, again one could look at a totally different regime.

But that should not be read as any great signal of what will come next, but as the provision of an opportunity to change the system at that time, if it were desirable to do so.

Mr. **Pease**. I see. In the event a substitute set of rules were agreed on bilaterally, how would this replacement of U.S. trade laws be implemented, in your view?

Ambassador **Yeutter**. That would really depend on the circumstances at the time. We are obviously not going to make changes that would leave our industries vulnerable to subsidization or dumping practices that would be damaging to them. So if a new system went in place, presumably we would be satisfied that it would give the necessary protections but simply do so in another way.

Mr. **Pease**. I am sorry, I think maybe you misunderstood my question. Would you assume that this would be implemented via an agreement, the treaty, or a change in U.S. statutes?

Ambassador **Yeutter**. I am sorry, I did misunderstand you, Congressman Pease. I would presume that we would probably just do it through a modification of the pretrade agreement and we would have to have legal counsel tell us whether that would require legislative action. It probably would, if it were a significant change. In which case, we would probably come back to this committee and to the Congress and presumably go through on a fast track basis, but that is all hypothetical at this point.

Mr. **Pease**. Mr. Chairman, I have just two more questions, each one in several parts. [Laughter.]

I will talk about steel just briefly, because Mr. Schulze raised some of my concerns before in the area of steel. As you know, I have been unhappy that our Canadian friends have taken advantage of the voluntary restraint agreements that we have negotiated with other countries to nearly double their share of the U.S. market over the last few years. As I understand, this share has gone down a little bit in recent months.

You say that this agreement does not affect, in any way, our system of voluntary restraints that we put into law 3 or 4 years ago?

Ambassador **Yeutter**. That is correct.

Mr. **Pease**. Then to be redundant, there is nothing in here that would proscribe the application of voluntary agreements to Canada at some future time?

Ambassador **Yeutter**. That is correct.

Mr. **Pease**. Secretary Baker, I wanted to talk, as Mr. Schulze did, about the value of the Canadian dollar. I understand your answer and respect your answer that these sorts of things would be better dealt with in a multilateral forum, rather than bilaterally, but let me just ask you, what is your opinion of the current rate of exchange between the U.S. dollar and the Canadian dollar?

Do you think that it is at an appropriate level or do you think that some change needs to be made?

Secretary **Baker**. I would prefer, Congressman Pease, not to comment in an open session about the relative value of any major currency against the dollar because it will have a market impact. I would be delighted to visit with you about that privately and give you my views.

But basically, the general view is that these matters are best handled in the multilateral context and in the Group of Seven meetings which we conduct periodically.

I did say, in answer to Congressman Schulze, that there has been a rather close relationship between the Canadian dollar and the United States dollar. When our dollar has strengthened, their dollar has strengthened. When our dollar has weakened, their dollar has weakened.

Mr. **Pease**. First of all, I would like to accept your invitation to consult with you privately on this subject.

The reason I raise the issue and why I think it is important to consideration of this particular agreement, is that we are eliminating tariffs between our two countries and that ought to make the Canadian market, as has been pointed out by Mr. Yeutter, more attractive to our exports because the Canadian tariffs have been somewhat higher.

But if there is a significant misalignment of our currencies, that could overcome significantly any advantage that we would gain from these tariff reductions. So I think it is a matter that is relevant to our general consideration of this agreement.

It will help very much if the administration, in the Group of Seven, will pay a lot of attention to this issue. If your determination is that it is not misaligned, then of course you would not want to do anything. But I hope you will look at that.

It is a little hard to understand, despite the tracking that you mentioned earlier, Mr. Secretary, why the dollar should have fallen so very significantly against the currencies of Japan, West Germany, Britain, and France and the others and have moved so very modestly in relation to the Canadian dollar.

Secretary **Baker**. The point I was making to Congressman Schulze, is the very same thing happened, Congressman, when the U.S. dollar was rising substantially. There is a record, I think, here that can be examined going back a number of years. Clearly, if there was a change in the procedure of handling this relationship on the part of the Canadians, that would be something that we would certainly want to inquire into, but that is an assumption that is not necessarily warranted, in my view.

I would be delighted to visit further with you about it privately.

Mr. **Pease**. One final point. I do not want to beat the subject into the ground, but just one final point. Perhaps my memory is faulty but my general impression is that the exchange rate has been about 75 cents to the dollar for the last 8 or 10 years, between the two dollars, during which time—particularly over the last 8 years—the dollar has gone way up and come way down.

The tracking that you mentioned, I do not think, has occurred over the last 8 years. The question is, why did not our dollar do better against the Canadian dollar when we were going way up?

Secretary **BAKER**. Let us visit about it tomorrow morning, if you want, at breakfast. I would be delighted to do that.

Mr. **PEASE**. We will be glad to work out a time. Thank you very much.

Chairman **GIBBONS**. Mr. Russo?

Mr. **RUSSO**. Thank you very much, Mr. Chairman.

Mr. Secretary, Mr. Ambassador, it is always a pleasure to discuss free trade with you two gentlemen. I have the greatest deal of respect for you.

Unfortunately, I feel that our Canadian counterparts are already violating the spirit of free trade. As you know, Mr. Ambassador, and Mr. Secretary, on April 29, I sent a letter signed by 35 members of the Ways and Means Committee to Prime Minister Mulroney to raise the question of pending legislation offered by the Minister of Communications to restrict the distribution of American films in Canada.

It is not a bad list of members. It is every member of this committee except the chairman and he creates letters, he does not sign any. So it is difficult to get his signature.

Our major concern is that one of the strongest contributors in terms of trade is films. The industry brings back to our country $1 billion in trade surplus every year. It seems to me that one of the things that we are doing right now is trying to give up something we do very well.

I have a difficult time understanding how somebody can say this is a free trade agreement while at the same time they create more and more barriers to our companies dealing freely. For example, we have a film company that is trying to open an office in Canada but cannot get the rights to do so. There is one already there. They are threatened with explusion.

I do not find that in the spirit of free trade. In fact, I do not think there is a Canadian company in this country that has ever been denied the opportunity to open an office in the United States. If there is, I would ask you to tell me what firm it is. I do not think you can find one.

So I have very, very serious concerns about this issue, Mr. Ambassador. In negotiating, I noticed that culture was taken out of the free trade agreement. Could you explain why?

Ambassador **YEUTTER**. I will comment on the cultural aspect and then Secretary Baker will make some comments about film distribution specifically.

With respect to culture, as you know, our Canadian friends have been concerned about their culture being absorbed in the process of implementation of a free trade arrangement. We do not believe that is of real concern to them, but it is difficult for us to put ourselves in their shoes because their view point is obviously different from ours, as they witness this giant to the south.

I have told them, on numerous occasions, Congressman Russo, that the experience of other similar arrangements does not indicate a great threat to individual cultures. The European Community now has 12 nations as members and it has been existence for 30 years, not involving all 12 but as an institution. And I see no evidence that any of the individual cultures within the European Community are endangered by that association, which is even more comprehensive and involved than ours is.

But the specific answer to your question is we did agree to the so-called cultural exemption but with specific language that protects our commercial interests. In other words, any time that cultural exemption works to our economic detriment, we have the privilege under the agreement of being made whole.

Mr. RUSSO. I am going to get to that later, but let me just tell you my personal view, having discussed this issue with our film industry.

There is a small group of anti-American distributors in Canada who want a piece of the pie. There is no question about this. Now they have gone to the Canadian Government and they said we want a licensing procedure.

Other than Switzerland, which is a small market for the U.S. film industry, there is no country in the world that demands licensing.

Ambassador YEUTTER. Yes, I just talked to our Swiss friends about that this morning, by the way.

Mr. RUSSO. Obviously, from some of the discussions I have had with you in the past, you are going to be doing what you can in bilateral talks to abolish that. But it seems to me that if you are operating in the spirit of free trade, but all of a sudden, we are talking about a licensing procedure, it seems to run counter to the spirit of free trade.

Ambassador YEUTTER. Secretary Baker will comment on it.

Secretary BAKER. Congressman Russo, you mentioned your letter of April 29. It is my understanding that the legislation which you referred to in there has not moved.

Mr. RUSSO. At least they got the message part of the way.

Secretary BAKER. I suppose that would be my answer to you, except to second what the Ambassador has said. Again, this is a situation that it seems to me we did not get what we would have liked to have gotten, but we are better off than we are now.

Mr. RUSSO. I do not know how you can say that, Mr. Secretary because how can we be better off? Right now we have a surplus with them and they want to stop us from being able to distribute unless we have world rights to films.

I understand negotiations have broken down between our industry, negotiations undertaken of the request of the Ambassador.

Secretary BAKER. It is my understanding that those negotiations have come very, very close, Congressman. They are still hung up on maybe one or two issues, but the two industries are continuing to negotiate. In the meanwhile, the discriminatory legislation that you are talking about has not moved up there.

As Ambassador Yeutter said, we have certainly reserved the right to take measures of equivalent commercial effect, should we be discriminated against even in these culturally sensitive areas. We simply could not get so-called cultural industries included.

So the question was, is the agreement worthwhile without them? It was our judgment that it is, provided we have the protection of equivalent commercial measures.

Mr. RUSSO. In your handout, that you sent to the members of the Ways and Means Committee, in your summary on culture, it mentions that the President has this discretion to deal out equal punishment. The only problem I have with that is that Canada does certain things affecting the film industry is not done anywhere else in the world today.

Then, when Canada does something because it is not covered by the free trade agreement, and it is copied by other countries to the detriment of our film industry, I think that action ought to trigger a response from the President. We ought to deal with these actions by meting out the same punishment.

I would be willing to work with the Secretary and the Ambassador on language that would just protect us, in case this agreement that the parties are trying to reach falls apart.

Ambassador YEUTTER. I would just respond to that by saying that if we start reaching out to third countries, I suspect we will jeopardize our GATT rights here. That is, run the risk of placing the agreement in violation of the GATT provisions that permit the negotiation of these kinds of arrangements.

There would be nothing, however, that would preclude us from attacking the third country that followed that kind of distorted examples. In other words, we would have to, I think Congressman Russo, go after the countries directly rather than indirectly.

Mr. RUSSO. I have some language I would like you to look at as we move along.

Ambassador YEUTTER. We would be glad to.

Mr. RUSSO. I have a couple of other questions, one dealing with market access, the proposal in the omnibus trade bill. The Senate version contains this language and as a conferee, I certainly hope the administration would go along in seeing that the market access provision is in the final version of the bill.

I just want to quote from a letter that Prime Minister Mulroney sent to the Senate Finance chairman, in which he stated that Canada's sole objective was to make it possible for Canadians to make and see their own movies. That was why they have this proposed legislation establishing the licensing process.

But the fact of the matter is that this proposal would not create one new Canadian film; it would not entice one more Canadian to buy a ticket to see a Canadian film. All it will do is enrich the handful of Canadian distributors that want to take a piece of what has been our market.

I am sure you pointed out to the Canadians, Mr. Secretary, that we do have an investment in film of about $250 million in Canada. That is not something they ought to lose sight of.

As someone who was trying to send a message early on that this could be a problem with the free trade agreement, based on the cultural exemptions, I just wanted you to know that there are some things that need to be done.

Hopefully, we can change it. I think it is an important agreement but we need to deal with some of the concerns that have been raised. I am sure you will hear them all before you leave this morning, so I thank you for your patience and the opportunity to work with you.

Hopefully, we can draft language that can deal with this cultural exemption, should the President see fit to step into the picture. I certainly hope that our Canadian counterparts would work very closely with our industry to try to avoid any confrontation or problem before we approve this legislation.

Thank you very much, Mr. Chairman.

Chairman. GIBBONS. Thank you. Mr. Matsui and then Mr. Thomas.

Mr. MATSUI. Thank you, Mr. Chairman. I would like to thank the two Secretaries for being here today and also for putting together an agreement that I think overall is beneficial to the United States. Certainly, a number of industries and others have visited with our offices and they basically have said that the agreement is very good for the United States. So I want to commend both of you for that effort.

I would like to bring up two points and very briefly, because I know that a number of other members would like to ask questions. In terms of the telecommunications section, I understand that the tariffs will be phased out over a 5-year period.

Now it is also my understanding that Northern Telecom, which is the largest supplier to Bell Canada, frankly, would have no problems if that tariff is eliminated immediately.

Is there any reason why that cannot be done, or are you negotiating that now?

Ambassador YEUTTER. The negotiation in that area is entirely concluded, Mr. Matsui. That was also one that was intensely debated up until the very final hours. And I believe we have pushed that area as far as we possibly can.

Some of the changes that were made in the last minute to accelerate the tariff reductions for our benefit came hard in the negotiating process. And I believe that our telecommunications people are really quite satisfied with what transpired at the very end.

Mr. MATSUI. Is it accurate that Northern Telecom has no problems, if in fact the tariffs were eliminated immediately? Or am I incorrect with that statement?

Ambassador YEUTTER. Let me see if we have got our telecommunications experts here who can answer that. I heard a voice saying that is correct.

Mr. MATSUI. My statement is correct?

Ambassador YEUTTER. Yes.

Mr. MATSUI. Then why is it, if that is the case, would the 5-year period be intractable at this time? Why could it not be eliminated?

Ambassador YEUTTER. There were a lot of tradeoffs involved there, Mr. Matsui, in reaching that final conclusion. I suspect if we tried to move it at all now, that we would have to pay a price in some other area. But Ambassador Murphy or others who participated in that particular negotiation could give you a blow by blow description.

Mr. **Matsui**. I will not need that now. I do appreciate that. Perhaps that is a matter that could be discussed if there are other issues that will be coming up, and I am sure there will be in view of the House and Senate hearings that you are going to be holding. And I would be interested to see, if they would in fact reject it.

Ambassador **Yeutter**. Ambassador Murphy did make one point that I should add to you, Congressman Matsui. And that is that we can accelerate any of these tariff reductions if we work out a mutual arrangement with our Canadian colleagues, at any time during the 10-year period. In other words, there is nothing to preclude us from doing this after the agreement goes into effect, or at any time. But it has to be a mutually balanced arrangement.

Mr. **Matsui**. My problem is that you and Mr. Baker may or may not still be where you are today, and you may not have as good negotiators, that is all. Second, I would not have a vote at that stage.

Second, I would like to discuss the subject that both Mr. Downey and Mr. Russo discussed, and that deals with the so-called cultural industries of Canada. And I guess the only thing I would like to do is just reiterate what they said and express my strong displeasure—not with you two because I understand where you are both coming from, and where the administration is coming from, but with what the Canadians are doing in this area.

I frankly think that it is a fraud, and certainly they are being rather misleading when they talk about their cultural industries. I mean, I cannot imagine how the Canadian people, frankly, tolerate the fact that the Canadian Government thinks that it has to be "big brothers" and not allow the free exchange of ideas. And that is what we are talking about here, the free exchange of ideas.

And it would seem to me that the Canadian people would have enough brains and common sense and intelligence to be able to decide what kind of a culture they would like as we approach the 21st century. And for the government to say that their people are not equipped emotionally, mentally or whatever the case may be to come up with that kind of a decision demonstrates to me a big brother approach.

And I frankly think the Canadians really ought to reconsider this issue. It is probably one of the few western world countries that, in fact, would want to preserve their cultural identity by preventing ideas from crossing their borders. It makes absolutely no sense in a democratic form of government.

And I know where you are coming from, and I am sure you probably made those very same arguments. But I am hopeful that the Canadian people will begin to realize that they cannot be overly protected by their big brother government in this case.

So I would like to thank you. I would like to also express support for what Mr. Russo wants to do. I think what he would like to do is to clarify the determination of the equivalent commercial effect. Not only the actual damages but potential damages, because I believe, as he indicates, that if in fact there is a prelicensing agreement that the Canadians will impose, other countries as well will begin to impose those prelicensing agreements on U.S. films, televisions programs, and also the home videos at this time.

And I just do not think we could tolerate that. And I think our retaliation has to be not only severe and swift, but also probably more commensurate with the damage that we are done.

Ambassador YEUTTER. We, too, are concerned about the precedential effect. And we will certainly debate that issue with our Canadian counterparts as time passes.

Mr. MATSUI. Thank you.

Chairman. GIBBONS. Mr. Thomas?

Mr. THOMAS. Thank you very much, Mr. Chairman. I would like to add my compliments as well to the administration. These kinds of negotiations are always difficult. They are always 11th hour, and we always wind up getting less than what we would like to get.

I do not want to repeat anything. I want to associate myself with virtually everything that has been said here and those areas of criticism. But I would like to spend just a minute or two in having you placate some of the concerns of the people that I represent in an area that does not have to do with tariffs and duties.

Just one quick example. We are all familiar with the trail mix kind of food packaging, semiprocessing or processed foods. We want to sell it in Canada. They, of course, want bilingual labeling on the packaging. That is fine. We have nutritional labeling requirements in this country. They are not quite the same in Canada, so they want it structured differently. And on and on, almost ad nauseum, the requirements for simple packaging of the goods have been, in effect, nontariff trade barriers for a long, long time as we have tried to get our products into Canada.

Now you have got a chapter 6 dealing with standards and technical corrections under GATT. But clearly, ag is not under that. Agriculture is under the agriculture section. And when you turn to chapter 7, you have got words such as, "The United States and Canada have agreed to work together to harmonize to the greatest extent possible" those various specifics. And, these provisions will facilitate trade for both countries by eliminating barriers where possible.

Those are obviously qualifiers that have to be in there. But what are some of the mechanics that are going to be undergone to try to solve these problems? And are you looking to work out a base of agreements that could be used for GATT purposes on standards in agriculture when we get to that stage?

Ambassador YEUTTER. I did not participate personally in the negotiations on standards, so if we have someone here who did so and can be more responsive to your question, I would be happy to have them come up and comment further. But let me try my basic recollection in that area.

And I believe it is that this basic standards chapter would apply to agriculture as well as to nonagricultural goods.

It does not?

Mr. ROH. It does not, but there are rules on——

Mr. THOMAS. There is some lapover, but it does not apply.

Ambassador YEUTTER. Mr. Roh says that it does not, so I stand corrected. But certainly the intent there was to attempt to harmonize standards between the two countries as appropriate. But let me ask Mr. Roh——

Mr. THOMAS. Mr. Ambassador, my concern is that they do not apply to agriculture. That is why you have a technical regulations provision in your agriculture chapter. But clearly the words are, "to the greatest extent possible," we will sit down and try to work it out. I just would like to hear some words about the degree of willingness to go in and fight for standardization in an area which does not come under an international umbrella.

Ambassador YEUTTER. It is obviously important. As you know, my background is agricultural so I have had a lot of exposure to those individual issues through the years. And even within the general consultative provisions in the agreement, we have the privilege of raising any of these kinds of issues at any time, and there is a 30-day responsiveness period involved under the FTA.

So I would think we should have no difficulty, Congressman Thomas, in gaining the attention of our Canadian counterparts on these issues and attempting to respond——

Mr. THOMAS. We have a dispute mechanism which clearly spells out procedures for either side. Do we have any understanding of how disagreements in this area might be resolved? Or is it something that we create as we go along when we have a problem and try to solve it as best we are able?

Ambassador YEUTTER. As you know, there is no precedent for any of this. So we are starting from scratch and building a dispute settlement history and tradition here. So whether it be in agriculture or anything else, Congressman Thomas, we are going to have to establish some traditions as we go.

Clearly, there will be problems of the kind that you have just cited. And we will certainly be willing to—willing and enthusiastic about confronting them as we go along.

Mr. THOMAS. My concerns will be that as we focus on these larger questions, there are some everyday, very practical problems that if both sides are willing could be resolved. If one side is not, I am looking for some kind of mechanism so we will be able to require at least a sit-down and explanation procedure. And I have not been able to see that, and that is what I was looking for.

Ambassador YEUTTER. Again, it would have to be the basic dispute settlement mechanism which has definitive time tables to it. That is the best we can do at this point.

Mr. THOMAS. Thank you very much. Thank you, Mr. Chairman.

Chairman. GIBBONS. Mr. Dorgan.

Mr. DORGAN. Thank you, Mr. Chairman. Mr. Secretary, Mr. Ambassador, I thank you for your appearance and your information today. I have not made a public statement about support or opposition to the free trade agreement, largely because I think many of us need more information about what specifically it means to our regions of the country. I would like to ask you some questions from the perspective of an agricultural producer, if I might, and see if I can understand a little better exactly what we might have done in the short term and the long term for agricultural producers in the free trade agreement.

We have, due to a unique set of circumstances worldwide, a situation in which agricultural commodities sell at world prices below the cost of production. We and the Canadians have established programs to enhance compensation so that the agricultural producers would be able to recover at least the cost of production.

It seems to me this agreement attempts to chisel away at the farm programs in both countries, calling them subsidies to farmers, when in fact many of us view them as subsidies to consumers who are paying less than the market cost of production for these goods. Is the attempt here to chisel away at the farm programs in both countries?

Ambassador YEUTTER. No, not at all, Congressman Dorgan. But let me embellish that because it is a complex question, and as you well know, we have had considerable discussion about that with respect to the issue of wheat. There are also some implications to sugar here, as you know, too, because of the particular FTA provisions that apply to sugar.

But basically the answer to your question is that we tried to relegate the basic agricultural issues to the Uruguay round. We made no attempt to try to resolve them here. What we tried to do here was simply deal with the agricultural questions that we felt were appropriate for bilateral resolution.

Now we did do some things in the wheat area that we believe will be helpful to our wheat producers, and hopefully they will be. But we did not attempt to solve the basic problems of export subsidy competition in wheat worldwide.

Mr. DORGAN. Now if I am a wheat grower in this country, I can see that the U.S. market is relatively wide open to Canadian exports, and the Canadian market is largely closed to imports from this country. Both of those conditions will remain following the passage of the free trade agreement. If I am a wheat producer I wonder if this is free trade and if it is fair.

Ambassador YEUTTER. That really goes back to the basic question Mr. Jenkins was asking with respect to eggs. The question is, did we reach a free trade solution? And the answer is no. Partially at least because we were looking for that major move to come from the Uruguay round.

But the comparison really should be, as I elucidated earlier, with the status quo. And I believe we can convince your North Dakota wheat producers that they are considerably better off with the agreement than they would be without it. And if I may, I will just tick off four or five reasons, because I anticipated your question and I jotted them down just before I came over here just as a reminder to myself.

One, as you well know, is the potential elimination of the import licensing system in Canada, which would remove one barrier to the movement of American wheat across the Canadian border. Now under the agreement, that will only be done when we reach a situation where our foreign program does not give us an advantage that would permit us to inundate the Canadian market with subsidized wheat products.

But nevertheless, when we reach the point where the support levels are equivalent, the elimination of that licensing system will be helpful. And it looks like we will have the elimination of that licensing system in some of the other crops. So that is one that is a potential future benefit.

The tariffs will go on both sides of the border, of course, and they are approximately comparable. So our Canadian friends will get some benefit of being able to ship wheat into the United States without tariffs after they are ultimately phased out. But our producers will also have the benefit of shipping into Canada without any tariffs precluding shipments going that direction.

The transportation subsidy into the West will help some. That is, the elimination of that subsidy that permits wheat to go west and then come on across into the United States. That is of some benefit.

There is also a provision here that says that neither country will use export subsidies into the other. That provision does not now exist, so we have some immediate protection against any kind of export subsidization of Canadian wheat into the U.S. market.

Mr. DORGAN. Might I interrupt just on that point?

Ambassador YEUTTER. Yes.

Mr. DORGAN. That would not include the Thunder Bay transportation subsidy on the eastern side of Canada, which as I understand amounts to 60 cents a bushel, for example, on Durum wheat. Under the free trade agreement, that subsidy, which is a fairly deep subsidy in competing for a U.S. market, would still remain and be sanctioned.

Ambassador YEUTTER. It would remain as it is today. In other words, that would not change in any way from the extant situation.

The final one is that there are commitments against dumping of surplus products in either country. And those commitments do not exist today.

And then finally I would simply add—and our wheat producer friends sometimes forget this—they still have the protection of the subsidy countervailing duty laws and the antidumping laws in section 301 and section 201 and a couple of others including bilateral safeguard provision.

Mr. DORGAN. But you have to be a young wheat producer to see those through to the end in most cases.

Ambassador YEUTTER. Maybe, but again, that would be no different from the situation that prevails today.

Mr. DORGAN. I understand. With respect to wheat specifically, I know that some of the growers in my part of the country have been suggesting certain ways to improve the FTA through the implementing legislation. Are you working with them and interested in working with them to find any opportunities that might exist to soften the impact of the FTA obviously within the context of the agreement.

Ambassador YEUTTER. Yes. Ambassador Holmer has indicated to me that he has been involved in some discussions with the wheat grower organization and with the Department of Agriculture. And it may be that we can develop some language that will clarify a couple of points here in a helpful way.

Mr. DORGAN. I appreciate that, and I think that could be helpful. Let me ask two other brief questions.

The suggestion is that the FTA will offer enhanced market opportunities on both sides of the border. Frankly, with respect to our part of the country, it is hard for me to see how it is going to offer enhanced opportunities going north from an agriculture standpoint. Can you see any in that area?

Ambassador YEUTTER. Yes, I think some of the changes will ultimately enhance opportunities going north, but not in a substantial way, until we get much greater disciplines on agricultural subsidies generally. We just cannot expect to do that in this negotiation. That has to be done in the Uruguay round.

So we believe that this negotiation is at least a minor step forward in terms of the potential to ship product north, and a minor step forward in terms of Canadian potential to ship product south. But it is not likely—overall, Congressman Dorgan, it is not likely to affect agricultural trade flows very much at all.

The likelihood of getting—that is in the areas of interest to you. It will help us a great deal in Congressman Matsui and Congressman Thomas' area where wine, for example, is a major product. But in the basic products in which you have a particular interest, there will not be significant change. That will have to come through the Uruguay round.

Mr. DORGAN. I would like at some point to explore further with you how the results of the Uruguay round might have an impact on this agreement. I will not take the time now.

Let me ask one last question. We share a border for hundreds of miles with Canada in North Dakota. The Province of Manitoba, which is an interesting Province politically and borders my State, has denounced the free trade agreement and indicated it will not comply with the agreement.

How could we be assured that we would see free trade at our border if the Province in Canada would fail to go along with the free trade agreement? Could you or the Secretary discuss that?

Ambassador YEUTTER. Yes, I will comment and then Secretary Baker can supplement if he wishes. We have simply said from the very beginning, Congressman Dorgan, that we expect the provisions of the agreement, whatever they may be, to be implemented. We intend to implement them on our side. We expect our Canadian friends to implement them on their side.

We have said from the very beginning that we did not wish to negotiate with the Federal Government of Canada and all of the Provinces. Our desire was to negotiate with the Federal Government of Canada. And it would be the obligation of the Federal Government to ensure that this agreement would be implemented.

So we are prepared to accept the assurances of the Federal Government that it will be implemented. And that if and when actions by the Provinces are essential in the implementation process, those actions will be taken.

Secretary BAKER. If the Federal Government, Congressman, should come back to us and say, we cannot get implementation by province X, we would expect some sort of redress from Canada, just as they would expect some sort of redress or compensation if we went back to them and said, with respect to Provision Y, we cannot obtain Congress' approval. We would simply have to find a way to compensate or find a way to redress.

Mr. DORGAN. Finally, let me say that there are many concerns out there in the agricultural sector about this agreement. Some of it may result from lack of information, and some might represent legitimate concerns about the unfairness of the FTA. We need to separate fact from fiction and make some real decisions based on that.

I believe in every area where there is an opportunity to make an adjustment to improve the FTA through implementing language, it would be very helpful for us to work together.

Ambassador **Yeutter**. I truly believe, Congressman Dorgan, that most of it is the former. That is, it is lack of information, or at least lack of clarification and understanding of precisely what is involved. Because I have looked at this agreement as an agriculturalist, and I am convinced that it is a significant, positive and not a negative.

Mr. **Dorgan**. I am not so sure. Obviously, I think the broad statements by some members of this committee are accurate, that in the long term, linking the arms of the two largest trading partners on this globe in a free trade agreement is good. But we do not always live in the long term. We live in the short term as well.

So we have to analyze what happens to our producers in the next 3, 5 and 10 years. If they are broke after 9 years, and a free trade agreement is in place after 12 that will not mean a whole lot. So all of us are trying to understand this from our individual perspective.

I am, incidentally, full of admiration for the job both of you have done. I understand, as Chairman Gibbons has said, this is not an easy task at all. Under the best of circumstances it is extraordinarily difficult to do what you have done. I hope we can work together to solve some of the problems that seem evident in the agricultural sector.

Chairman. **Gibbons**. I think it would be appropriate at this time we announce that there will be a hearing in Mr. Dorgan's area on March 11 in Fargo, ND. And of course, all members of the subcommittee and full committee are invited to go.

Secretary **Baker**. Mr. Chairman, may I add one thing to my last comment to Congressman Dorgan?

Chairman **Gibbons**. Certainly.

Secretary **Baker**. Where I suggested that if for some reason we could not get provincial compliance, we would expect to be compensated or we would seek redress, I do not by saying that, Congressman, mean to suggest in the least that we do not expect the provinces to comply fully. That was the agreement and we expect full compliance from the provinces. And we expect the Government of Canada to provide that.

Chairman **Gibbons**. I think that is the only appropriate way to attack the problem.

Mr. Levin?

Mr. **Levin**. Thank you, Mr. Chairman.

I welcome you, as the others have. Some of us have carried on a lot of discussion privately, especially with the Trade Representative, and Mr. Secretary with your distinguished representatives, Mr. McPherson and Mr. Murphy, Mr. Merkin and others.

These discussions have sometimes been intense but I think always respectful. Now we are in a setting where we have to go from private discussions and give-and-take to public give-and-take.

We are going to try to follow the same respectfulness, even where there might be differences.

As I have expressed to you and everyone privately, and publicly, I very much would prefer to support this agreement. I think the more free trade the better.

I would like to comment briefly on the standard, Clayton, if I might call you by your first name. I think we ought to discuss the framework within which we proceed publicly. You say, on page 6, it would be a terrible mistake to evaluate this agreement on the basis of its impact on particular firms, industries or even States.

Let me demur a bit. I do not see how you can evaluate this agreement unless you look at its impact on perhaps not firms, but industries and states. That does not mean you take a single industry or single State and simply evaluate on that basis alone.

But whoever wrote that sentence, it can read as somewhat of a finesse. I think you should expect, and I think our constituents would expect, and I think the country should expect that we will have a careful evaluation of the agreement in terms of potential impact on industries and, surely, States, because we do not come from nowhere or everywhere.

I hope we do that without tossing labels back and forth. I think we would have a much better discussion here if everybody agreed never to use the word protectionist, never to use the word parochial, never to use the word reciprocity, whatever you want. The greatest enemy of intelligent discussion on trade, I think, has been labels.

I just wanted to give you my feeling. I am not ashamed to talk about a state or an industry because trade agreements should be judged by what they are likely to mean in reality and not in theory.

You say also, on page 6, Mr. Ambassador, that the agreement would be a broad step toward significantly freer trade and a massive advancement over the status quo. Let me just go through with you, if I might, the standard of a bold step towards significantly freer trade, in terms of an area that Mr. Pease and others have raised, and that is the auto sector.

Trade between the United States and Canada, as we all know, is governed by the auto pact. It governs the big 3, up until this point. As it has been implemented in Canada right now, Canada has the following preferences or barriers that we do not have. One is the requirement that for every car that is sold there by the big 3, they have to produce one there. We do not have that barrier or that requirement.

I think this trade agreement would not change that. That is correct, is it not?

Ambassador **Yeutter**. Yes. You are making the very point that I have made all afternoon, that we did not attempt to resolve all the problems of United States-Canada trade in this agreement. That is an illustration of that.

Mr. **Levin**. But when you say you did not attempt, you really attempted in the auto sector but did not succeed. That is fairer than saying you did not attempt, right?

Ambassador **Yeutter**. Well, it became obvious at a very early stage of the negotiations, Mr. Levin, that if we were to insist on the abandonment of the automobile pact that there was never going to be a free trade arrangement.

Mr. **Levin**. So you did not attempt to—how would you describe it? Did you try to?

Ambassador **Yeutter**. There were innumerable discussions on this point over a period of many months, but there is no point in beating one's head against a stone wall. At some point in time, one has to exercise the judgment of concluding that that is not a realistic objective and we should move on and do other things.

What we attempted to do then, when it became obvious that the auto pact could not be eliminated, is we attempted in essence to encircle it and limit its impact as much as we possibly could and then do everything we could in the way of freeing up automobile trade outside of the gamut of the automobile pact.

Chairman **Gibbons**. Secretary Baker has an appointment, so we will excuse him at this time. We thank you very much for your very constructive help here.

Secretary **Baker**. Thank you, Mr. Chairman.

Mr. **Levin**. If I might continue, the Canadians also have a requirement, as to the big 3, that they have to manufacture or purchase in Canada content worth 60 percent of what they sell in Canada. We do not have that kind of a domestic content requirement.

Ambassador **Yeutter**. That is correct.

Mr. **Levin**. That stands unchanged by the discussions, right?

Ambassador **Yeutter**. I believe so. Yes, Mr. Merkin says that is correct.

Mr. **Levin**. Now, as I understand it under the auto pact, the big 3 can bring in—and I do not think this is understood very widely—they can bring in any components they want from anyplace in the world duty free while that is not true—or is it true—of the big 3 in the United States?

Mr. **Merkin**. We have our own schemes, but the one you are describing, the Canadians have implemented the benefit to the auto pact that is duty free entry on a most-favored-nation basis. That is, if any company, whether it is big 3 or not, meets the performance requirements which you have described, they can import from anywhere in the world.

Mr. **Levin**. That is duty free?

Mr. **Merkin**. That is correct, as long as you continue to meet the performance requirements. There is a limit on how much they can bring in duty free.

Mr. **Levin**. That is not true as to the big 3 in the United States?

Mr. **Merkin**. We have other schemes, like duty draw back in the foreign trade.

Mr. **Levin**. But does it add up to duty free import?

Mr. **Merkin**. On everything, no.

Mr. **Levin**. So there is that further imbalance which is not affected by the United States-Canada trade agreement.

Then, on duty remissions, just so the record is clear, as I understand it, it works this way: Canada has been giving duty remissions to companies as they bring cars in from the outside to the extent—and we do not know the details perhaps of all these agreements, to the extent that they are purchasing Canadian products, right?

Mr. MERKIN. Yes, they have two different type schemes. Some are based solely on exporting parts. Depending upon how many parts they export.

There is an export based remission program, or a series of those, which are dependent upon the export of parts out of Canada. Depending upon the level of exports, they can get the duty remitted on a certain level of finished automobiles coming into Canada.

There is an additional set of remission programs that are production based. That is, they get remission on the finished autos coming in if they make a certain level of investment in Canada and they use and export Canadian made parts.

Mr. LEVIN. The latter are eliminated?

Mr. MERKIN. Well, the agreement deals with all types of duty remissions, but it deals with it differently.

Ambassador YEUTTER. All are eliminated, but the export based remissions are eliminated immediately, if I remember correctly, whereas the production based are phased out over several years as they expire, is that correct?

Mr. MERKIN. Immediately, they can no longer count exports of parts to the United States in any duty remission scheme. They cannot get any credit for that. The production based schemes will expire as their existing contracts expire, which will be no later than 1996.

Duty remission schemes that provide for export of parts to other markets than the United States will be eliminated under the general duty remission elimination clause, which is a 10-year clause.

Mr. LEVIN. So some of the duty remissions continue for a number of years, up to 10 years?

Mr. MERKIN. That is correct.

Ambassador YEUTTER. But in the absence of the FTA, they presumably would have continued forever.

Mr. LEVIN. So now that the record is clear, as to what is still there and what is not, let us take your other standard of massive advancement over the status quo.

About a third of the trade between the two countries is in the auto sector, right? We are not talking about a small sector here.

Ambassador YEUTTER. Yes.

Mr. LEVIN. Hardly provincial. And more or less a third of the present deficit in trade between our two countries is in the auto sector, correct?

Ambassador YEUTTER. Yes.

Mr. LEVIN. The Secretary said, in answer to a question on the other side about symmetry, there would be a heck of a lot—I think he said a hell of a lot. It will be a hell of a lot more symmetrical than today, he said.

With the continuation of these preferences and these barriers, what have you gauged to be the likely picture in auto trade, parts and assembled autos, in the next 5 years?

Mr. MERKIN. I do not know if we have done any economic analysis that fine tuned. We can certainly ask our colleagues in Commerce to take a look at that. But I think in the 5 year period you are going to see an improvement for a number of reasons.

One is that tariffs outside of the auto pact will be coming down. They will not be down to zero within 5 years because it will be a

10-year phaseout. But certainly we are offering now an option outside of the auto pact to get eventually duty free trade in automotive products between the two countries.

In the fifth year replacement parts, that is parts for use in the aftermarket sales, will be down to zero in 5 years. So that will increase some opportunities for U.S. parts producers.

Mr. LEVIN. How much of the trade is now covered by tariffs?

Mr. MERKIN. How much of which trade?

Mr. LEVIN. In the auto sector between our two countries?

Mr. MERKIN. I would gather that, just off the top of my head, that most of it must be duty free under the auto pact.

Mr. LEVIN. And so the fact tariffs are coming down is not likely to significantly affect the balance?

Mr. MERKIN. Not initially, I would not think.

Mr. LEVIN. You said you would be talking or willing to talk to the Department of Commerce about the likely effect. That tells me that—and I think it would be a good idea—that you have negotiated an agreement that relates to a third of our bilateral trade and deficit and you really have no clear idea what the impact is likely to be on our deficit the next 5 to 10 years.

Ambassador YEUTTER. We know the impact, Mr. Levin, is positive.

Mr. LEVIN. How do you know that?

Ambassador YEUTTER. Like all of these changes are an advancement over the status quo.

Mr. LEVIN. How do you know that?

Ambassador YEUTTER. The question is how positive will they be?

Mr. LEVIN. How do you know how it will affect the $4 billion plus Canadian surplus in autos? How do you know that?

Ambassador YEUTTER. Mr. Merkin can expand on this, but looking at the changes that are made in the FTA on autos, it seems to me that any that I can recollect right now are likely to work out as a net positive for us in the auto trade. Maybe not all of them. We would have to go back item by item and evaluate those for you and perhaps Mr. Merkin can do that right now.

But it seems to me that what we have seen is an advancement not as far as the number of people in the automobile industry would prefer, and perhaps not as much as you would prefer, Congressman Levin, but it seems to me it is clearly a question of not whether it improves our balance but how much.

Let me see if Mr. Merkin can be more specific.

Mr. MERKIN. In getting back to your original question, we felt that getting rid of as many of these trade distorted practices would be to the benefit of the U.S. industry. The U.S. industry is not just one segment. It is the assemblers as well as the parts producers. So there was a major effort to try to resolve differences between those two subsectors.

Clearly, we believe that getting the tariff down, outside of the auto pact, will eventually lead to a better freedom of choice for either new entrants that want to operate in North America or for existing manufacturers to sell into the Canadian market, that they will no longer only be able to get duty free entry into Canada under the auto pact.

The remission programs are being phased out. These are clearly trade distortive and to our disadvantage.

Mr. **Levin**. Do we know how many there are?

Mr. **Merkin**. Sure, they are all listed in the agreement.

Mr. **Levin**. And what they amount to, in terms of impact on trade?

Mr. **Merkin**. We have some calculations on how much duty has been foregone on the assembled vehicles coming into Canada as a result of the remission programs. It is a very low number.

Mr. **Levin**. A very low number. So the points that you have mentioned so far, the reduction in tariffs, is not likely to have a major impact because most items go through duty free. And we ought to look at that figure. My guess is it is very low and the impact of duty remission, you say, is low. The tariffs are low.

So what else is there that has been touched here, which gives some hope that there would be—to use the language here—a massive advancement over the status quo? How about taking out massive?

Ambassador **Yeutter**. No.

Mr. **Levin**. How about a significant advancement over the status quo?

Ambassador **Yeutter**. No, I think it will prove to be massive. We are talking about nationwide for all elements of the FTA. We are not talking about just automobiles, even though automobiles are one-third. That ignores the other two-thirds. Even if we assume for purposes of argument that the changes in autos are not massive, I am convinced that it will be massive.

Mr. **Levin**. Overall.

Ambassador **Yeutter**. Overall. And we probably are underestimating the potential benefits.

Mr. **Levin**. Let me suggest this, Mr. Merkin. Let us take you up on your suggestion that there be an analysis by the Commerce Department. I think it would be useful to have, before there is action, some clear—as clear as possible—analysis of the likely practical impact on the massive trade imbalance between our two countries in autos. Okay?

Ambassador **Yeutter**. I think that is fair enough. There have been some overall analyses already done, Mr. Levin, not for automobiles, but for the entire FTA. All of them, every estimate that I have seen, looks pretty impressive.

Mr. **Levin**. Let us see that analysis done for autos.

Mr. Pease asked you about the standard of preference. In recent weeks, we have been receiving somewhat added information and maybe somewhat different information from the Canadians about their resistance to the change from 50 to 60 percent, a change that most on our side thought was a good idea and that many of us discussed at great length. During the negotiations we discussed the strategy of this change and whether you would ever get it if they did not think that you would hold out for it. Some recent discussions indicate that maybe the Canadians were motivated more by the phasein issue than by the fact that they were asking for something else.

For example, an article appearing just a week and a day ago in the Toronto Star reported that Mr. Merkin said the United States proposed the 60-percent rule of origin to placate—I doubt if he quite said that—U.S. part makers who insisted a higher level was needed to ensure car makers operating in Canada and the United States continued to buy most of their parts in North America. The Canadian industry, a key sector in the country's manufacturing base, also supported the stronger measure to protect investment in jobs in Canada, according to the Toronto Star.

I am not sure it was the entire industry, but clearly the auto parts industry did and continues to press for the 60 percent. However, and this is the Star's analysis anyway, a deal fell apart when Canada balked at the idea in part because of pressure from Japanese automakers who complained their Canadian assembly plants could not meet the tougher North American content level without disrupting their traditional supply lines from Japan.

I would hope that because of the interest expressed on both sides, that you would continue to pursue it.

Ambassador YEUTTER. I think Ambassador Murphy ought to comment on that, if he might, Mr. Levin, because he was the one who was involved in those final discussions.

Mr. LEVIN. You would not shut the door totally, since there seems to be some renewed discussion back and forth?

Ambassador MURPHY. Let me try to respond the best I can.

First of all, as you know, we were in discussions with you over that weekend for quite some time. I think it was pretty clear what the view of the industry was at that time. The view of, I would say, of the UAW, of the industry as a whole, was clearly that what we were proposed was not sufficient in order to go to 60 percent.

You will recognize that at the October 4 understanding, the agreed number was 50 percent. Essentially, we reopened that and tried to push for 60 percent. Subsequent to that, I think that there have been phone calls and there is no incentive on the Canadian parts people to go to 60 percent.

I think as long as Commerce is doing an analysis of the benefits of the agreement, one of the things that I think would be very helpful for us would be to find out what is the difference between 50 and 60 percent? How much more beneficial will that be to the United States, as opposed to going with the current agreement?

Obviously, if the Canadians come back to us and suggest that they have to go to 60 percent, I do not think you will see anybody in the administration that would say no.

Mr. LEVIN. Mr. Chairman, I appreciate your indulgence and my colleague's. Two things. I think it would be useful to analyze the change from 50 to 60. We were motivated because we were told by experts in the field that it would make a major difference indeed. They maybe all did not agree, but most did.

It would have meant that at least one of the major components, engine or drive train, likely would have been made in North America with all the impact that that has rippling throughout the industry.

Just one last comment: I would hope that we would not leave it strictly to the Canadians to carry on this discussion.

Ambassador YEUTTER. I would just say to that, Congressman Levin, based upon my own contacts with representatives of the Government of Canada, that it is obvious that there is divergence of opinion in Canada on that issue and thus far there certainly is no consensus in Canada in favor of the 60 percent number. We have no reason to believe that they will achieve consensus at 60 percent.

If they did, as Ambassador Murphy indicates, we would certainly entertain the reestablishment of bilateral discussion on the issue.

Mr. LEVIN. Good. One factor that may increase the chance for consensus over there is their understanding unhappiness over here. That is being communicated, I hope, clearly enough.

Mr. Chairman, I was going to ask some questions regarding steel products, but I will either wait or I will submit them in some other way.

Mr. PEASE. Would the gentleman yield?

Mr. LEVIN. Yes, I would like to yield the last half a minute of my 5 minutes to the gentleman from Ohio. [Laughter.]

Mr. PEASE. I appreciate the gentleman yielding. I will really only take 30 seconds.

I would just like to emphasize a few words that Mr. Levin read a few minutes ago from the Toronto Star where he said Canada balked at the idea of a 60-percent rule in part because of pressure from Japanese automakers, who complain that their assembly plants in Canada could not meet the tougher North American content level.

I do not know which Japanese companies we are talking about, or whether we might be talking about Korean companies like Hyundai. But our Canadian friends ought to look at those commercials that ran in the Iowa primary last week and at least were somewhat responsible for the front runner on the Democratic side.

This is an issue that is strongly felt in the United States, and which could get out of hand. None of us want that to happen. I would hope on the part of the USTR, that you will not merely be willing to talk with the Canadians, if they raise the subject, but that you might be willing to raise the subject yourselves.

I appreciate the gentleman yielding.

Mr. LEVIN. Again, I appreciate the time, Mr. Chairman.

Chairman GIBBONS. Thank you. Mr. Pickle?

Mr. PICKLE. I thank you, Mr. Chairman.

Mr. Ambassador, it is good to see you again.

Ambassador YEUTTER. It is good to see you, Mr. Pickle.

Mr. PICKLE. I want to ask a question along the line that has been touched on a little earlier, but with respect to energy. I do not know who has won and who has lost in a lot of these deals. As far as various industries are concerned, because the majority of United States-Canada trade is already duty free, I guess the import of this agreement will arise from the elimination of nontariff barriers.

It seems to me, in the oil and gas industry, that it is clear that this agreement was reached on the basis of trying to help the consumer more so than the producer. I have both producers and consumers in my State, but obviously it looks like the north and the east, or certain regions, are being helped from a consumer standpoint more than the producing regions.

You were asked earlier if an oil import fee would apply to Canadian imports. I think Mr. Jenkins asked about textiles. Would it apply to Canada, and the reply was no, that they would be exempt.

Our industry, the U.S. industry, is now subject to the windfall profit tax. Are Canadian producers subject to a windfall profit tax?

Ambassador YEUTTER. Let me ask our lawyers to comment on that. I really cannot give you the answer to that question. Maybe somebody back here behind me can do so.

I am not sure whether we have any tax experts here or not, Mr. Pickle. If not, we will give you the answer to the question later.

Mr. PICKLE. Who is the gentleman that will respond? I am assuming that Canadian producers would be treated with favor as in the example of the import fee; is that correct? Will Canadian producers be subject to a similar windfall profit? Are they subjected to it any way now?

Ambassador YEUTTER. I guess we do not have any tax lawyers here, but maybe Mr. Roh can comment.

Mr. ROH. The FTA does not affect that situation one way or the other. In other words, it is not an income tax——

Mr. PICKLE. Will you talk into that microphone.

Mr. ROH. I am sorry. The FTA does not affect the income taxes like the windfall profits tax one way or the other. So if there is a Canadian company that is subject to U.S. tax in the United States, then it is still subject to it.

Mr. PICKLE. My next question would be, if the U.S. producers are subject to such a tax, is that fair to our producers? What is the rationale for exempting Canada and making our producers subject to it, and then giving special consideration to certain regions of the country?

Ambassador YEUTTER. On the import tax, that is obviously something that affects the flows of trade between the two countries. And that would be subject—that would call for a Canadian exemption, because obviously if we were to apply an import tax and if Canada were not exempted, the flow of Canadian energy into the United States would be adversely affected.

And Canada, under those circumstances would have a right to ask us to in some other way make them whole because we would be violating the spirit of the free trade arrangement. Just as if Canada were to apply that kind of tax to a U.S. energy product flowing into Canada, we would have the same right to ask for compensation.

Mr. PICKLE. Does Canada give any kind of subsidies to their oil and gas industry?

Ambassador YEUTTER. They may well have some. Because the agreement does, in most cases, does not deal with the question of subsidies. It is for that reason, of course, Mr. Pickle, that we left in place the countervailing duty laws so that we had some protection against them.

Mr. PICKLE. I think it would be fair to say that Canada would have more generous incentives in natural oil and gas production than we do.

Ambassador YEUTTER. Could be.

Mr. PICKLE. Whether you call them subsidies or not, that's the question. But the fact of the matter is, it is. Now here they have extra incentives, and here you are going to give them greater access to the U.S. market. That is, no barriers at all for the exports of their oil and gas industry. And our producers would be subject to our tax laws.

Now that means that oil and the gas primarily is going to be sold by Canadian interests to regions of our country adjacent probably to Canada. That is going to follow. That means that our market is going to be cut, plus the fact that we have got extra taxes and we have got fewer incentives. So it just seems to me that this is unfair.

Now you have almost that situation now, Mr. Ambassador. But the producers in this country are being hard hit. And I think you people who negotiated it kept in mind the consumer and not the producer. I say to you, with the rig count down now to almost a minimum, it is alarming. And yet, we seem to be giving more of it away.

I talked to my oil and gas people in my state, and they are very concerned about it. They have tried to be not improper about it, but they are hurting, hurting bad, and this hurts them all the more. Now I just think that somewhere we ought to try to get more equity in that particular area. And I would like to—hope you all could keep that in consideration in the next few months.

Ambassador YEUTTER. We would like to communicate with you on that subject, Mr. Pickle. Maybe we can do it at a later time. Because my judgment is that they are not going to be adversely affected at all. And the reason for that is that Canadian energy flows into the United States unobstructed at the moment, so that situation is not going to be altered by the FTA. So I am not sure what they are concerned about because essentially we have free trade coming across the border now from Canada.

Mr. PICKLE. I think they could tell you, and they will tell you very freely. And we will have that chance later. But I think they are in a position to make a case and I want them to have that chance.

Ambassador YEUTTER. Okay, be glad to talk to them, because the intent of this agreement on energy is not really to tilt toward the consumer—although it clearly has major benefits to consumers in the United States—but simple to have free and open trade in energy between the two countries.

Mr. PICKLE. All right, I have one other question. It pertains to the basic question of mergers and acquisitions. A couple of years ago now, my subcommittee attempted to get into this question of mergers and acquisitions and we did not get much encouragement down the street to do anything. So we continue to let the big eat the little or vice versa, and it has pretty much gone on like that.

We could not even get any corrections in the so-called junk bond market. I think eventually we will. We are not trying to distinguish between hostile and friendly takeovers because I do not know there really is that difference.

But the question has risen again now in the field of investments. And Secretary Baker earlier today had said he thinks this is a good agreement, that we ought to encourage investments. Now here is a complaint being registered with me, and it is along the line that Mr. Schulze had made earlier.

The Canadians have the right to have a review board to determine whether they want this to go through or not. And they can either accept it or reject it, as their review board says. We in the

United States do not have such a board. And we were told that the negotiators were going to correct that. And apparently you feel that you have corrected it by setting limits of, I guess, $150 million at a certain level and phasing it up or down. And that will not really affect some of these big operations.

Now is there any better way to get an equity? Because it seems like if Canada can decide they want to have an acquisition or not, they can just stop it. We cannot. We cannot even get close to the courthouse on it. And I would think that there are dangers of a lot of raiders coming in from Canada with investment. And some of them are not good raiders, we will say. And that threat exists.

Now is there any way to correct that other than just these limits? Is that how you try to correct it?

Ambassador YEUTTER. Secretary Baker answered essentially that same question from someone else earlier this afternoon. And what he said was that we have long believed in free and open investment flows in this country, and we do not want to do anything in the FTA or in other legislative activity that would impede investment flows. What we argued to our Canadian friends was that they ought to have free and open investment flows, too. Not only because we have an interest but because it would be in their own self-interest.

But the fact is, what the FTA does is very substantially reduce the screening of investment activities, foreign investment activities in Canada. It does not totally resolve the differential. In other words, there still is that threshold in being.

So we did not in this negotiation get all the way to a free and open investment regime in Canada. But it is infinitely improved over the situation that prevails today.

Mr. PICKLE. You would accept the free flow of investment even if it was rather obvious that this was going to result in consolidation of businesses here and thousands of jobs would be lost?

Ambassador YEUTTER. I would want to see some evidence to the effect that that investment would lose jobs. I think generally speaking——

Mr. PICKLE. If that evidence could be shown, would that be something you could consider?

Ambassador YEUTTER. The Administration would have to look at that in terms of administration policy. But it seems to me that the record of 200 years is that foreign investment has generally created jobs in this country.

Mr. PICKLE. In most of these areas, Mr. Chairman, will additional hearings be held and chances for further discussion on these subjects be held later?

Chairman GIBBONS. Yes, we are going to announce it in just a few minutes.

Ambassador YEUTTER. Excuse me, Congressman Pickle, Jan reminds me one element that I should mention. And that is, as you well know, we do have the Hart-Scott-Rodino Act that provides some protections in that area.

Mr. PICKLE. I think the chairman is going to make some statement. We will have additional hearings and a chance to look into these two areas. I want to try to see whether there cannot be more equity reached in it. This is not a statement of opposition to the so-called treaty because I am sure you all did the best you could on it. But there are still some areas for improvement. I hope we can do that.

Thank you, Mr. Chairman.

Chairman **Gibbons**. Thank you, Mr. Pickle. Mr. Frenzel?

Mr. **Frenzel**. Mr. Chairman, I just want to tell comrade Pease that we have decided to give the Dick Schulze traveling trophy to Congressman Levin for meritorious service this afternoon. And we will look for further precedent-setting speeches. I will have to tell you, there are no cash awards that go along with it. [Laughter.]

Mr. Chairman, a number of our colleagues have congratulated Ambassador Yeutter and Secretary Baker on a splendid piece of work. And I want to be the tail of the dog and say the same thing. I think it is an extraordinary job. They did not do it by themselves. Peter carried most of the heavy lifting for the longest period of time, and Bill and others I think also performed nobly along the way.

I agree with the statement that this is going to help economies, producers and consumers on both sides of the border, and I think you are to be congratulated. I think it is extraordinary that there are so few sectoral interests that are complaining.

And I note in my region, for instance, wheat growers are complaining, not because they were disadvantaged but because they did not achieve their high aspirations to disadvantage people on the other side of the border. I find our sugar growers are carrying the same kind of discussion. And I detected in Mr. Levin's comment a complaint simply because the higher aspirations were not realized.

I believe that you changed the calculation of the 50 percent, so in fact that interest is better protected than before; is that not true?

Ambassador **Yeutter**. That is correct.

Mr. **Frenzel**. And I did not hear that mentioned as one of the advantages that was derived from the pact. But at least I am told by some producers that that is an advantage.

Mr. Ambassador, I would like to ask a general question before talking about the treaty. And that is that the last announcement of our trade statistic was one that gave us a better result than any of us anticipated. We expected the number to come down eventually. Did not know when. Did not expect it certainly to come down that far.

In another week or so we are going to have another announcement. Nowadays, everybody expects the number to keep plummeting. If it does not do that, we will have a lot of presidential candidates explaining how they were right or why they should be right.

I wonder if you could tell us what, from your vantage point, we are likely to expect through the year with respect to that trade deficit number. And particularly, what you see for us in the short run.

Ambassador **Yeutter**. I would be happy to do that, Congressman Frenzel. And obviously, prognostications are dangerous in this area, particularly monthly prognostications because those can be terribly distorted. We all need to learn the lesson of paying more attention to quarterly numbers or annual numbers rather than monthly numbers.

But putting all that aside and just looking at the broader picture of where we are likely going, one would first need to distinguish between nominal numbers and real trade flows.

In nominal numbers, I would say, Congressman Frenzel, that we are clearly going to see improvement as the year rolls along, whether or not the next monthly figure is encouraging or not. And the reason for that is at the exchange rates which prevail today, we are just tremendously price competitive. And in my judgment, we are also improving the quality of American goods, and have done so in a very significant way in the last few years.

When one puts improved quality together with a much enhanced pricing structure, one has to conclude that we have improved our competitiveness in a dramatic way and that that will be felt in the trade numbers as time unfolds.

One reason why it has not shown in the nominal numbers thus far, Congressman Frenzel, is that we seem to extend the J-curve periodically. In fact, we seem to do it every few months. What has happened is the dollar has fallen in ratchet fashion. And each time it takes another decline, we extend the bottom of the J out into the future some more.

Since we have another recent decline here a few weeks back, one can expect that J-curve effect to be felt in the coming months. Which says to me that the improvement in the nominal trade numbers is likely to occur to a greater degree as we go into the last half of the year and on into 1989.

It seems to me more important, Mr. Frenzel, to evaluate trade flows in real terms. And if we do that, the turnaround started something like 18 months ago. In comparing the most recent quarterly data with a quarter that was 15 months back—that is five quarters back—we have had an improvement in our trade deficit of almost 25 percent. Our exports are up about 25 percent in real terms during that 15-month period or thereabouts. And imports are up just slightly, but they are essentially flat.

As you well know, in November we had the all-time high record month in exports in either nominal terms or in real terms. So we are getting the turnaround. That is reflected in jobs.

And if we look at the job numbers in recent months and see them climbing, particularly in the manufacturing sector, that is why. And I really expect, Mr. Frenzel, that our improvement in the trade deficit will be the principal booster of the U.S. economic growth rate over the coming year or two. In other words, of the growth that we will have in the U.S. economy in 1988, I suspect that at least one-fourth of it and maybe more will be attributable to the improvement in our trade situation.

Mr. FRENZEL. Thank you, Mr. Ambassador. Then you are not going to go out on the limb and predict how many billion dollars we are going to peel off the deficit this year?

Ambassador YEUTTER. No. [Laughter.]

Mr. FRENZEL. I notice the Business Roundtable indicated that it believed that there would be something like a $40 billion export surge this year. Is that possible?

Ambassador YEUTTER. I hope that is the case, Congressman Frenzel, but I would rather be a little more conservative than that and await some evidence that we really have gone through the bottom of the J-curve and are beginning to climb up the top. Because we are not going to see those kinds of numbers until we start to climb up the other side of the J-curve.

Mr. **Pease**. Would the gentleman yield?

Mr. **Frenzel**. Of course.

Mr. **Pease**. I appreciate the gentleman yielding. I think the real question is how much of a surge there is going to be in the cost of the imports that we get in this year even if the level of imports is flat.

Mr. **Frenzel**. I agree with the gentleman. We cannot eat the oil imports no matter what happens to the rest of our economy. We are going to have those. And whenever you have a price increase in oil, our imports are going to go up.

Ambassador **Yeutter**. But I do believe, Congressman Pease, that in response to your comment that with exchange rates where they are today, it will now become increasingly difficult for foreign firms to penetrate the U.S. market. In other words, a lot of those firms in my judgment have now used up a good bit of the cushion that they were able to accumulate during the days when the dollar was much higher.

In other words, they are going to have to work a lot harder and accept a lot more economic turmoil within their own companies in order to maintain market share here in the United States than they did a few months ago.

Mr. **Frenzel**. Mr. Chairman, I have another question of the ambassador. I wanted to ask it of the Secretary, but he escaped. An earlier question, I think posed by former titleholder Schulze, had to do with exchange rates. And the Secretary discoursed a bit on that subject. I wanted to ask him, and I will ask it of you in his absence, is there any evidence of any rigging of the exchange rate? Is there any evidence that that exchange rate is other than a rate determined in a relatively free market?

Ambassador **Yeutter**. I would want to give Secretary Baker the privilege of correcting the record on this if he would like to do so. So I will speak only of the USTR and not in any way seek to preempt the territory of my fellow Cabinet officer.

But I certainly have not observed anything during my tenure that would indicate manipulation of the United States-Canadian dollar relationship.

Mr. **Frenzel**. I would like to follow up on a couple other questions, principally those relating to actions which the Canadian Government may or may not be considering. One of them with respect to textiles. Another one raised today was with respect to cinematic endeavors.

I assume that you have registered very vigorously with your counterparts in Canada that changes of that nature which fly in the face of the Punta del Estes standstill agreement and violate the spirit of the United States-Canada free trade agreement can only jeopardize the ratification of the agreement. Have you had those kinds of discussions?

Ambassador **Yeutter**. Yes, we have, Mr. Frenzel. And I would just go on to say that this development has some irony to it in that there was a lot of discussion of this subject by our Canadian colleague during the negotiation. That is, expression of concern on their part that we might violate the spirit of the agreement between the time of signing and implementation. And it would now seem that the greater risk is in the other direction.

Mr. **Frenzel**. Thank you. Again, I want to compliment you on the job you have done. It has been vigorous, and it is not as though that was the only chore your agency was handling during the period.

Mr. Chairman, may I yield the gentleman from Michigan time?

Mr. **Levin**. No, I did not want time. Thank you anyway. It is tempting to discuss further the trade figures, including the disaggregation industry by industry. But I think this is really on the United States-Canada trade pact, and I will resist the temptation.

Mr. **Frenzel**. Mr. Chairman, I yield the balance of my time.

Chairman. **Gibbons**. Mr. Schulze has a couple of comments.

Mr. **Schulze**. Thank you, Mr. Chairman. And Mr. Ambassador, thank you for putting up with this long afternoon. But there are three or four items that I would like to give you the opportunity to respond to.

The FTA calls for development in 5 to 7 years of a substitute system of antidumping and countervailing duty laws in both countries. Given what we may consider lack of consultation with Congress that occurred during the 90-day period leading up to the signing on January 2, what assurance do we in Congress and the private sector have that our views will be taken into consideration regarding the development of this substitute system of trade laws?

In addition, is there any reason we should doubt that U.S. antidumping and countervailing duty laws would be weakened in this future substitute system in exchange for some perhaps vague Canadian promises to eliminate subsidies?

Ambassador **Yeutter**. As I indicated earlier this afternoon, Congressman Schulze, it is premature to draw any conclusions on what kind of regime might be put in place by the two countries 7 years from now on either antidumping or the countervailing duty areas. It may well be that we would all choose to—both choose to continue with the existing system as modified by the FTA. It might be that we would choose to go back to the systems that prevail in the two countries today.

It might be that we would be ready then to abandon these systems entirely and go to something like alterations of the antitrust laws to handle any kinds of concerns that might emerge in this area. But that is all conjectural because it is many years hence.

In terms of the substance of the issue or of the consultation elements of that issue, that will be a responsibility of one of my successors. But I suspect that the goodwill that exists between USTR and this committee will always continue in the future.

Mr. **Schulze**. But there is no necessity to consult. There is nothing in the agreement that says there is a consultative process. And that is my concern.

Ambassador **Yeutter**. I am not aware that there is any specific language that would call for consulting with the Congress. But certainly the basic trade legislation would seem to me provide ample messages to the executive branch.

Mr. **Schulze**. I would presume then there would be no problem with building in a little bit of—I do not mean a veto necessarily, but at least a structured consultative process.

Ambassador **Yeutter**. I would think not. Obviously, we would want to look at the language. But just to make one other point of clarification on the consultations. I saw the list of the number of times that we did consult with the Congress during the negotiating process, and it was 104 times.

Mr. **Schulze**. Clayton, I wish you had not said that because it was some of the worst consultation I have ever seen. Everybody who came into my office—and I called often—said, we've got nothing to report. We're making no progress. And everything was done in those last 72 hours.

So although those statistics may look like it was a deep consultative process, I was not a recipient of that kind of consultation, meaningful consultation. Anyhow, let us move on because I do not want to——

Mr. **Frenzel**. Would the gentleman yield on that point?

Mr. **Schulze**. Sure.

Mr. **Frenzel**. I would like to suggest that I think that language, while it may not have had its genesis in the consultation, was discussed in our consultations. I remember Chairman Gibbons saying, would it not be the proper long term suggestion that each country conform its trade relief laws to each other, so that we would be working off a common statute. And we discussed in our meetings that sort of thing and other approaches, to which I believe the language may be referring, and of course, other alternatives as well.

But I know that our committee has discussed that. I did not know what form it was going to take. But certainly it was one of the items we talked about.

Mr. **Schulze**. And I might say, I agree wholeheartedly with the goals, but I just think the committee should have a portion of the process, be involved with the process as it goes along. And perhaps we can iron that out in the language.

Ambassador **Yeutter**. I just want to make one more point, if I can interrupt for just a second, Congressman Schulze. Because I want to be sensitive to the consultation concerns that you all have. And I would simply say that I have never been, in my lifetime, involved in a negotiation quite like this one where so much was done in the last 3 to 4 days.

That is not necessarily the most desirable way to conduct a negotiation, but there are some particular reasons why it evolved that way. And it is simply true that an enormous amount of this negotiating was done in the last 3 to 4 days.

Mr. **Schulze**. Clayton, if Canada's opposition party happened to replace the present government, and knowing the opposition's opposition to the FTA, suppose it moves in and tries to either alter or freeze, or let us say freeze the investment portion at a lower figure or make some radical changes. What provisions of the FTA protect us against the whims or even the possible wrath of another Canadian Government?

Ambassador **Yeutter**. The basic dispute settlement provisions would apply in any case like that. And if we are adversely affected by a change of that nature, we would be entitled through the dispute settlement mechanism either to some kind of compensation that would emerge in a mutually agreed fashion. Or if it were such a serious matter that it simply could not be resolved in an amicable way, we can obviously terminate the agreement.

Mr. SCHULZE. So I would guess if that happened, there would be no mutually agreeable resolution. And so it is a matter of termination of the agreement.

Ambassador YEUTTER. I would—obviously termination is a very harsh response. So one would assume that in most, if not all cases, that some kind of compensating device or mechanism would emerge to even the playing field once again.

Mr. SCHULZE. Suppose Canada implements a VAT, which has been discussed, which is GATT legal. It would sort of, in effect, thwart the thrust of the free trade agreement.

Is there any recourse or would there be any steps which we could take?

Ambassador YEUTTER. Essentially, the procedure that we have just discussed would apply. In other words, if anything of that nature came along, that clearly impacted trade flows, we would have the privilege——

Mr. SCHULZE. Even though it is GATT legal?

Ambassador YEUTTER. Yes, that is correct. And if we did some things that were GATT legal but adversely affected Canadian trade flows into the United States, we would be subject to the same complaints.

Mr. SCHULZE. One other question and again it concerns a GATT legal practice. It is in the area of national defense. If we have a producer here and DOD opens all of our bids to Canadian and United States producers for a particular product and let us say Canada decides for that same product, under the same circumstances, that they are going to protect their domestic industry.

I just think that that goes against this agreement, that basically it is wrong. If we are going to open our DOD process, they should open theirs on similar items.

Now, is there anyway that that can be redressed, can be handled, where the situation exists?

Ambassador YEUTTER. There is a fairly narrow national security exemption in this agreement, as you know, Congressman Schulze.

Mr. SCHULZE. So that I am not sandbagging you, I know of an instance right now where that is happening. That is why I am asking the question. I want to know if there is a way to resolve it.

Ambassador YEUTTER. I am assuming that this again can be raised under the dispute settlement mechanism as a violation of the spirit of the agreement, if not a violation of some specific provision. Obviously, the agreement is not now in effect, but if it were in effect, I assume that there would be no difficulty in raising it.

Mr. SCHULZE. Was it the intent of the negotiators to have that kind of equal access? That to me would be sort of a nontariff barrier. Although maybe there is some legitimacy to it, if we do not have that symmetry then it would be, in my opinion, a nontariff barrier.

Was it the intent to eliminate that type of artificial barrier?

Ambassador YEUTTER. Let me ask our chief negotiator to comment.

Ambassador MURPHY. If you look at the procurement market in both sides, obviously our market is considerably larger than the Canadian market. If you look at the various different mechanisms we have, essentially to protect ourselves, I think it was our view and we were pushed by Canada to include this in the negotiation. It was our view that maybe we should not include it in the negotiation.

For the argument of symmetry that you mentioned, there is the Surface Transportation Assistance Act. There is a small business minority set aside program. Both of us felt, on our negotiating team, that that would probably not be in the long term U.S. interest and it would not gain much support in Congress.

To the extent that we are not protected as a result of that, I think you have to recognize the fact that what we tried to do is protect where we thought were the real concerns in the United States.

In terms of the legalities, I do not have a specific answer for you on that.

Mr. SCHULZE. So the resolution then would be to do it legislatively and then it would be legal. It just seems to me that we perhaps could have a mechanism where we could address the problems, but I think we could do it legislatively.

Ambassador YEUTTER. What we ought to do is get the information that you have on the specific case and see if we can apply it to this format and evaluate it, Congressman Schulze.

Mr. SCHULZE. Mr. Ambassador, I thank you for your forbearance, and Mr. Chairman, I thank you.

[Responses to questions submitted by Mr. Duncan follow:]

April 11, 1988

The Honorable John J. Duncan
U.S. House of Representatives
Washington, D. C. 20515

Dear John:

At a hearing held on February 8, 1988, by the Trade Subcommittee of the Ways and Means Committee on the U.S.-Canada Free-Trade Agreement, we received a set of written questions submitted on your behalf. Your questions, and our responses, follow. I apologize for not having replied sooner.

1. Despite a heavy use of direct subsidization by the Canadian federal and provincial governments of Canadian industry, the proposed Agreement does not address the issue of subsidies. In light of the fact that the Agreement in effect endorses subsidy practices, how does the Administration intend to address Canadian subsidies either on a bilateral basis or through the Uruguay Round? Importantly, since concessions on subsidy practices will be an objective of the Uruguay Round, how can the Administration honestly expect to win concessions from other trading partners on a multilateral basis in the Uruguay Round in light of the precedent established on subsidies in the Canadian Agreement? Isn't the ability of the U.S. to achieve phasing out of subsidies with other countries made even more difficult by the fact that the Canadian Agreement is held up as a "model" for a series of other bilateral arrangements with other trading partners?

Response:

The Free-Trade Agreement (FTA) in no sense endorses subsidy practices. The Agreement fully preserves the right of U.S. companies and workers to obtain relief from injurious subsidized imports under our countervailing duty law. The FTA does not exempt Canada from these laws.

We did seek to negotiate greater discipline over governmental subsidies in the FTA, and we made some progress on a bilateral basis with respect to export subsidies. Existing international rules already prohibit export subsidies on non-agricultural products. The FTA adds a prohibition against export subsidies on agricultural products in bilateral trade, including a prohibition of sales at prices below full acquisition cost by entities such as Canada's wheat board. Those are useful steps for our bilateral agricultural interests. We didn't go further to prohibit agricultural export subsidies to other countries for the simple reason that the European Community and other competitors would have then been left a free hand in third-country export markets. We'll be tackling that issue in the Uruguay Round, in which Canada and the United States have agreed to work together.

With respect to domestic subsidies--those granted by governments whether or not the subsidized product is exported--we were unable to reach agreement on new rules. There are several reasons we were not able to agree. Domestic subsidies are a particularly sensitive and complex issue. Though such subsidies clearly can distort international trade, governments normally have what they view as legitimate domestic objectives for granting such subsidies, such as aiding disadvantaged areas, environmental concerns, enhancing scientific research, worker re-training or adjustment programs. We have our own points of sensitivity in this regard. For example, we have agricultural support programs, and state governors were extremely reluctant to accept disciplines against investment incentives that many provide for new industries. It is difficult even to reach a definition of what is a subsidy. A further problem in our negotiations was Canadian insistence that the use of countervailing duty laws be sharply curtailed as part of the price of any increased direct discipline on the granting of subsidies. The many Congressmen and Senators we consulted on these issues supported our view that the price asked was too high.

Within the relatively short time-frame we had for these negotiations, it was simply not possible to reconcile all these competing interests. That does not mean we have given up on the worthy objective of achieving greater discipline over domestic subsidies. The FTA specifically provides for the establishment of a working group which will seek over the next five to seven years to develop more effective rules and disciplines concerning the use of subsidies. Far from endorsing such subsidies, we have thus retained our rights to act under our laws when such subsidies are injurious, and set out a work program that I think both countries hope will produce greater discipline. Naturally, we recognize the need for close consultation with the Congress and domestic interests in this process and the need for Congressional approval of the results of this process.

We do not underestimate the difficulties of achieving increased multilateral discipline on domestic subsidies, but we do not think that the FTA will pose any additional obstacles in this endeavor. In one important respect, it is more logical to pursue increased subsidy discipline on a multilateral rather than bilateral basis. Increased discipline on domestic subsidies by one or two countries benefits all third countries, even if they do not undertake comparable increased discipline. Those third countries could still subsidize the same products in competition with our producers. While our countervailing duty law protects us from injurious imports of subsidized products in our own market, we would still face undisciplined subsidies in other markets. Thus, despite the added difficulty of dealing with the sensitivities of a range of countries, the multilateral approach to increased subsidy discipline is in many senses more advantageous.

You also expressed concern that the FTA will be regarded as a "model" for other bilateral and multilateral negotiations with respect to subsidies. The thrust of the FTA as a whole, to eliminate and liberalize restrictions to trade and investment, is the direction we believe the United States should go. However, that does not mean that the FTA, in what it covers and does not cover, is in every respect a "model" for multilateral rules or for dealing with the bilateral relationship with other countries with different trading regimes and traditions. Some provisions that are acceptable or advantageous in the context of the FTA with Canada may well not be appropriate in other agreements.

2. From the beginning, the Canadian objective in these negotiations was to achieve some restraint in the application of U.S. trade laws--if not outright exemption--with respect to Canadian imports. Can you tell me in what way this Agreement, particularly the bi-national dispute settlement mechanism, will restrain U.S. laws?

Response:

The FTA does not change U.S. or Canadian countervailing duty or antidumping laws. The bi-national panel will substitute for judicial review of final administrative determinations to the extent a case in either country involves products of the other country. In conducting its review the panel will apply the importing country's law (including judicial case law) and standard of judicial review. The panel will thus have the same functions as a court: to ensure that Commerce and ITC decisions are in accordance with our law, and that comparable Canadian administrative decisions conform with Canadian law.

3. The Congress in 1979 enacted changes in the trade laws to create a strong system of judicial review for the countervailing duty and antidumping laws in order to ensure that these laws would be enforced in the way that the Congress had intended. The Congressional creation of judicial review was in response to a growing concern in the 1970's that countervailing duty and anti-dumping decisions were being dominated by political considerations within the Administration. How can the Congress be assured that the dispute settlement mechanism proposed in the Canadian Agreement to replace judicial review will result in the countervailing duty and dumping laws being administered and enforced in a way that

Congress had intended? Does not the dispute settlement approach make it more difficult for the Congress to have control over administration of the countervailing duty and antidumping laws? By the same token, how can we be certain that replacement of judicial review with a binational panel will not result in a *de facto* politicizing of administration of the countervailing duty and antidumping laws?

Response:

There is no reason to believe that a five-member binational dispute settlement panel composed of highly qualified panelists will politicize the AD/CVD laws in either country. The mandate and authority of these panels is limited strictly to applying the national law, as well as standards of judicial review of the country whose decision is challenged. Moreover, should there be an extraordinary problem with the outcome in dispute settlement--such as a serious conflict of interest or gross misconduct by a panelist, or a fundamental departure from rules of procedure--the Agreement provides an extraordinary challenge procedure, in which the matter is referred to a binational panel of judges.

The Congress, of course, retains oversight authority regarding these laws, and is free to amend them at any time it deems amendments warranted. If the Congress were dissatisfied with actual experience with binational dispute settlement panels under the FTA, it could simply change the law and reinstitute U.S. judicial review in all cases, including Canadian cases. While this would place the U.S. in breach of its obligations under the Agreement, the Congress retains unquestioned, uncircumscribed, constitutional authority to so legislate.

4. I understand that Mr. Charles Rule, Deputy Assistant Attorney General for Antitrust Enforcement, said in a speech to the New York Bar Association on January 27 that the U.S. may decide not to enforce the antidumping laws for Canadian imports under the Canadian Agreement. Mr. Rule instead suggested that under the Agreement the U.S. might only apply our antitrust laws for predatory pricing with respect to Canadian imports. Would you comment on Mr. Rule's statement? Is the Administration considering an option to substitute antitrust laws for enforcement of the antidumping laws under the Canadian Agreement?

Response:

A copy of Mr. Rule's full statement is attached.

Some economists on both sides of the border feel that antidumping laws do not reflect or accord with commercial realities. They believe that, particularly in the context of the Free Trade Area, the U.S. and Canada could rely instead on their antitrust laws to deal with discriminatory pricing practices.

The Agreement calls on the U.S. and Canada to seek to negotiate new shared rules on unfair pricing and government subsidization. When the bilateral Working Group begins this task after January 1, 1989, reliance on antitrust laws in lieu of antidumping laws in U.S.-Canada trade is likely to be only one of many approaches proposed. We cannot now foresee what Working Group recommendations, if any, may emerge. U.S. Working Group members will, however, consult with the Congress and the private sector as the talks proceed, and implementation of any new rules would require Congressional action through implementing legislation.

5. Although most of the public attention surrounding the Agreement has focused on the dispute settlement mechanism and the argument that U.S. law will prevail for countervailing duty and antidumping petitions brought by U.S. industry, the Agreement itself calls for negotiations over the next five to seven years to work toward the objective of an eventual elimination of U.S. anti-subsidy and antidumping law. To what extent can we be assured that these negotiations to phase out our countervailing duty laws will be tied to precise concessions and progress on the elimination of Canadian subsidy programs? Since I assume that subsidy practices were a subject of negotiations leading to the Agreement, how do we know that the Canadian government will be any more forthcoming on progress in the subsidy area in the next five to seven years?

Response:

The general objective of the negotiations provided for in Articles 1906 and 1907 is to try to agree on more effective rules and discipline concerning the use of subsidies and countervailing and antidumping measures. There will be no agreement unless both countries are satisfied that the rules negotiated are more effective. Further, the Congress would clearly have to approve and implement the results of these negotiations. There will be no agreement without Congressional approval. We would anticipate that U.S. negotiators would consult closely with the Congress and the private sector in such negotiations.

There is never any guarantee in any negotiation between sovereign countries that agreement will be reached, and the issues for both sides in this case are sensitive and difficult. Nevertheless, we do not believe either the United States or Canada is fully satisfied with the status quo. Canada did indicate a willingness to discipline subsidies during the FTA negotiations, but we did not feel that the disciplines offered by Canada justified the concessions that Canada would have demanded in return (nor vice versa, from a Canadian perspective). The FTA negotiations, however, were conducted under relatively short time constraints, considering the complexity and sensitivity of the issues for both countries. The longer time frame now provided for these negotiations under Articles 1906 and 1907, coupled with the closer ties that we believe will arise from experience with the FTA, should give these negotiations a much better opportunity to succeed.

6. It is widely understood that the Canadian government at both the federal and the provincial levels have very direct involvement in providing assistance to Canadian industry, largely in the form of domestic subsidies as economic development assistance to protect employment on a regional basis. This subsidization is widespread and is common largely in natural resource type industries. For example, we understand that there have been some $500 million in direct grants, loans, loan guarantees, and even loans that may never have to be paid back in the nonferrous metals industry. How can this degree of government intervention be justified as consistent with a free trade area? Workers in a number of basic industries in my state have made sacrifices on several fronts to achieve competitiveness internationally. What should I tell workers in these industries that they must now compete with government supported industry in a free trade area.

Response:

Existing international rules do not prohibit domestic subsidies. In fact, the United States, at the federal and state level, grants such subsidies. However, an importing country has a right to impose countervailing duties on subsidized imports that cause or threaten material injury to the domestic industry.

The FTA will not change this situation for any U.S. industry. A U.S. industry or its workers that believes that imports from Canada are subsidized and causing or threatening injury may still seek redress under the U.S. countervailing duty law, which is not changed by the FTA. The FTA will phase out normal customs duties in both countries for bilateral trade, but those normal duties (which are already quite low for most non-ferrous metals) are not intended to offset unfair trade practices. The appropriate response to injurious imports of dumped or subsidized products is countervailing or antidumping duties, to which your workers will retain full recourse under our laws.

7. The Congress is currently deliberating on important trade legislation that includes changes, as you know, to the countervailing duty laws and to Section 301. I have heard that Canada may request an exemption from the trade bill as a condition for its own ratification of the Agreement. Will the Administration be seeking such an exemption?

Response:

The FTA clearly does not require a generic exception for Canada from the omnibus trade bill, whose precise provisions, as you know, have yet to be decided. Obviously, we hope the final bill will not include any provisions that would place us in violation of the FTA. Canada will undoubtedly expect us to assure the conformity of our trade laws with our obligations under the FTA before it enters into force, just as we expect the same of Canada. To the extent the omnibus trade bill or any other U.S. legislation is enacted with any provisions that would place the United States in violation of the FTA, the proper course for us is to rectify the violation in the implementing bill which Congress must approve for the FTA to enter into force. If we did not take satisfactory steps to implement our FTA obligations, Canada could either decline to put the FTA into force or elect to use the dispute settlement provisions of the FTA to obtain redress. We will have the same choice if we believe Canada has not satisfactorily implemented Canadian obligations under the FTA by the time of its scheduled entry into force.

8. The Canadian negotiator, Mr. Simon Reisman, has been quoted in the press as saying that, "the U.S. negotiated like a third world country . . ." in the bargaining for the Agreement, and that Canada took the U.S. 3 to 1 on issues finally agreed to. How do you respond to Mr. Reisman's observations? Were our negotiators too burdened by an overall policy objective to win an Agreement for its own sake?

Response:

We do not agree with Mr. Reisman's observations, which were made to a Canadian audience in the context of substantial criticism he had taken from many Canadians concerning the negotiations. We believe both the United States and Canada will derive considerable economic benefits from the FTA. Mutual trade liberalization is not a zero sum game; it will stimulate growth, efficiency and employment for both countries. If you examine the FTA, we believe you will agree that the United States is clearly better off with the FTA than without it. We urge Congressional approval of the FTA because it is in the economic interest of the United States.

9. Section 301, as you know, received considerable attention by the Congress during the debate over the Trade Bill, and amendments to Section 301 are the focus of considerable attention in the Conference on the Trade Bill. Yet, the Agreement appears to be silent on use of Section 301. Can you give us some indication of how you foresee Section 301 being implemented with respect to Canada? Given the discretion that is embodied in Section 301,

would there ever be Section 301 action applied against Canadian practices, particularly if the Administration would feel bound to act in a manner that does not violate the "spirit" of the Agreement?

Response:

One of the main purposes of section 301 is to provide domestic authority for the President, on his own motion or by petition by any interested party, to enforce U.S. rights under trade agreements. Section 301 thus can be used to enforce the new rights and obligations of the FTA. Some U.S. rights under the FTA, such as the right to respond to cultural measures provided in Article 2005 of the FTA, could be enforced without invoking the general dispute settlement procedures provided in Chapter 18 of the Agreement. In other section 301 cases involving an alleged breach of the FTA or impairment of U.S. rights under that agreement, we would invoke the dispute settlement provisions of Chapter 18, using the authority of section 301 to take countermeasures in the event of Canadian non-compliance with the results of the dispute settlement process. In short, the existing provisions of section 301 will be a vital tool for the enforcement of the many new rights we will gain under the FTA.

Section 301 also provides authority to act against unreasonable or discriminatory foreign practices, even if those practices do not violate U.S. rights under an agreement. That authority will remain applicable to Canada, both for self-initiated cases and cases initiated by petition. If such cases cannot be resolved through negotiations, then the President properly must consider the higher risk of foreign counter-retaliation against innocent U.S. industries if he chooses to retaliate in a way that would violate our international obligations against a foreign practice that does not breach our rights under international rules. However, I am not aware of any such case under section 301 in which the President's decision was determined by the "spirit" of an international agreement.

I hope that the answers set out above will prove useful to you in your examination of the Free-Trade Agreement. I look forward to working with you in drafting implementing legislation for the Agreement.

Sincerely,

Clayton Yeutter

CY:Rci

Chairman **Gibbons**. Thank you very much.

We have completed the first day of hearings on what I think is a very historic agreement. We will announce tomorrow further hearings on this subject, the place, time and date of those hearings.

If members need to have hearings such as the one we are having in North Dakota in March, please submit them to us and we will try to work your particular hearing in. It is the intention of the Chair to move rapidly through all of this.

I want to congratulate the U.S. negotiators, the Canadian negotiators, and everyone who took part in all of this.

Mr. Yeutter, and Mr. Baker's representatives, we will have some other questions in writing for you, which we will submit. Mr. Duncan has some and I am sure there will be others. We thank all of you for attending today. We are off to a good start.

Ambassador **Yeutter**. Thank you, Mr. Chairman.

Chairman **Gibbons**. We know that we are going to have some more hearings here before we get to Fargo.

[Whereupon, at 5:05 p.m., the subcommittee was adjourned.]

UNITED STATES-CANADA FREE TRADE AGREEMENT

FRIDAY, FEBRUARY 26, 1988

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman Gibbons. Before I call on our first witness, I would like to recognize our very fine colleague, Mr. Schulze.

Mr. Schulze. Thank you, Mr. Chairman.

Mr. Chairman, I would like to inquire of you whether there is something further we can do to procure two reports which were prepared by the International Trade Commission at the request of the U.S. Trade Representative having to do with the Canadian Free Trade Agreement. I wrote to the Special Trade Representative on December 15, 1987, requesting this report, and again on January 27, 1987, reiterating my request. I have not been overly aggressive, I have told them I would like to see it.

As one who very much favors a Canadian-United States Treaty but also one who has been critical of some of the processes by which this treaty was developed, I thought if I had the information which our negotiators had, I might be a little more sympathetic to their results. It is going to be very difficult for me as a member of this committee to vote and work on this without having the type of information they had, and I am going to reach the point, Mr. Chairman, where I am going to either ask you or our legal counsel what we have to do to subpoena it. It seems to me it is information we should have before us during these deliberations.

Chairman Gibbons. I know of no reason why you shouldn't have this information. I will do all that I can to make sure that you get it.

Mr. Schulze. I would like the two letters written—

Chairman Gibbons. Certainly. Without objection, they will be in the record at this point.

[The information follows:]

HOUSE OF REPRESENTATIVES,
Washington, DC, January 27, 1988.

Hon. CLAYTON K. YEUTTER,
U.S. Trade Representative, Executive Office of the President, 600 17th Street NW, Washington, DC.

DEAR CLAYTON: On December 15, 1987, I wrote to you requesting copies of two ITC reports on the U.S./Canada Free Trade Agreement which were prepared at your request. Unfortunately, I have received neither the reports nor a response from you stating your position on the possibility of declassifying these reports.

Clayton, I cannot overemphasize the importance of providing appropriate members of Congress the opportunity to peruse these reports so that we may fully educate ourselves before the Congress begins deliberations on the FTA.

Thank you, Clayton, for your consideration in this matter.

With best wishes, I am

Sincerely,

DICK SCHULZE,
Member of Congress.

HOUSE OF REPRESENTATIVES,
Washington, DC, December 15, 1987.

Hon. CLAYTON K. YEUTTER,
U.S. Trade Representative, Executive Office of the President, 600 17th Street NW, Washington, DC.

DEAR CLAYTON: I am writing to request copies of the following two reports on the U.S./Canada Free Trade Agreement (FTA), which were prepared by the International Trade Commission (ITC) at your request: (1) One prepared by the Office of Tariff Affairs on the rule of origin issue; and (2) One prepared by the Office of Industries on the effects of tariff elimination on U.S. industries.

I have been informed that the ITC cannot release these reports without your authorization; this is based on an agreement signed by Bill Brock during his tenure as the USTR.

I am disappointed that the Administration did not consult fully with Congress during the drafting of the FTA. In this regard, I feel it is absolutely imperative that the aforementioned reports be declassified and made available to members of Congress, so that we may fully evaluate their contents. Giving Congress the opportunity to do so will facilitate its consideration of the FTA which, clearly, is in the best interest of all.

Thank you, Clayton, for your consideration in this matter.

With best wishes, I am

Sincerely,

DICK SCHULZE,
Member of Congress.

Mr. SCHULZE. All right.

I congratulate you on these hearings, and I hope we can iron out any difficulties we have. This will be a great step forward not only in international trade, but also in the relationship between the United States and Canada.

Chairman GIBBONS. Fine. That is the spirit. I want to say time is running, not the official time, not the lapsed time on the clock, but this year is fast running out because of all of the political events that take place in the United States this year. I want to say to all of those who are interested in this agreement—and I know a great many people are interested—better keep in touch with us. We will start the informal negotiations soon under the fast track procedure with the administration, and I hope we can get an early vote on this matter.

It is an important agreement, it should not be left hanging, and I don't intend to have any grass grow under my feet as far as consideration of the matters concerned, and both favorable and critical consideration of it, and to move as rapidly as possible. So, if you are interested, be forewarned because we will move as rapidly as possible.

Our first witness this morning is the American Coalition for Trade Expansion with Canada, William Lilley, president of the American Business Conference; James D. "Mike" McKevitt, representative, National Federation of Independent Business; and Harry L. Freeman, executive vice president of the American Express Co.

Glad to have all you gentlemen here this morning.

STATEMENT OF WILLIAM LILLEY III, PRESIDENT, AMERICAN BUSINESS CONFERENCE, AMERICAN COALITION FOR TRADE EXPANSION WITH CANADA

Chairman GIBBONS. Mr. Lilley, you may proceed first if you wish.

Mr. LILLEY. Thank you. I would ask permission to have my statement submitted for the record.

Mr. Chairman and members of the subcommittee, I am pleased to testify today on behalf of the American Business Conference (ABC), a coalition of chief executives of 100 fast-growing midsize companies representing all sectors of the economy. We applaud your decision to hold hearings on the single most significant trade negotiation in recent years, the United States-Canadian Free Trade Agreement. This subcommittee and the Committee on Ways and Means as a whole will obviously play a key role in the evaluation and final dispensation of the agreement. The executives of the American Business Conference hope that at the end of that process Congress will pass implementing legislation thereby bringing the agreement into effect.

The American Business Conference has long been an advocate of free trade negotiations with Canada. ABC was a founding member of the American Coalition for Trade Expansion with Canada (ACTE/CAN), an informal group of companies and associations of all sizes united in support of more open trade with Canada.

Since President Reagan and Prime Minister Mulroney signed the agreement on January 2, only about 2 dozen companies and associations have chosen to leave ACTE/CAN. At the same time, several dozen new companies and associations have signed on. The net result is a coalition with over 530 members rededicated to seeing the free trade agreement through Congress to final implementation. ACTE/CAN stands today as the strongest and most diverse private sector group ever created to support a major legislative initiative.

I would like to talk to you about an issue operative in Congress, and that is how the free trade pact would impact jobs in the United States, and I would like to use the example of the American Business Conference as an example of why the free trade pact is pro-job creation in the United States.

The companies of the American Business Conference are high-growth companies. They grow about 15 percent per year, they are high-wage companies, they make products or services that are value added, high innovation, high-quality products. There are 25 manufacturing companies, 25 high-tech companies, 50 service companies, and in that sense they are a good mirror image of our gross national product.

These companies create, on average, Mr. Chairman, in the United States 14 percent new jobs per year per company. This is important for the Canada pact. If you look at the estimates done by the Federal Government, they estimate if the pact was to be implemented, then our gross national product would rise four-tenths of 1 percent and in so doing add 500,000 to 750,000 new jobs. That is an extremely conservative estimate, because the way the Government has calculated that job growth is to take businesses already operating from the United States into Canada and to measure how their jobs would grow because of loosened restrictions on trade.

However, if you were to take the American Business Conference, there is an example of a much greater job growth that would occur. We now have 42 of our companies that do business in Canada. We polled our companies; if that pact would be implemented, that number would rise from 42 to 72.

The reason is clear why you would get that rise. For small and middle size companies which have very small staffs, tariffs and customs are a disproportionately heavy burden deferring companies from going into countries and doing business. In this case, with my companies, which are very successful companies, they simply don't go to countries where they have what they regard as an unnecessary impediment to doing business.

I thought I would give three good examples of companies I know you are familiar with. We have an excellent company from Rhode Island, A.T. Cross, they make Cross pens, the tariff on writing instruments in Canada is 13 percent. It would go to zero in 5 years under this agreement. They simply don't bother to do business in Canada now because they don't need the hassle of 13 percent and the duties.

Another famous American company from Michigan is Herman Miller, leading maker in the United States of upscale office furniture. The tariff on office furniture is 15 percent in Canada, to go to zero in 5 years. Miller would start doing business in Canada.

A company from the west coast, Neutrogena, they make soap and shampoo, upscale manufacturers of soap and shampoo. The tariff is 11 percent on soap going into Canada. They don't bother doing business there.

Now those are companies that would start doing business in Canada if the pact was implemented, and because of the proximity of the Canadian market, the similarity of our cultures, that growth would almost entirely be in exports from this domestic market into that domestic market. So you would have a double in terms of jobs creation.

I would like to say, in closing, Mr. Chairman, three points additional to the job point. First, from a business perspective, the issue of the adjudication mechanism for dispute settlement proposed under the pact, this is a process the business community would support. Under this process, we are worried less about sovereignty issues which are political issues than as businessmen we are worried about certainty—under this process, there would be a set time in which you would get a certain result. That is not the case under certain GATT procedures now.

The second point I would make, speaking for the three of us here, and you probably are more familiar with this than anyone in the Congress, I have never seen the American business community as united—small companies, midsize companies, big companies—behind any measure as I have seen in this United States-Canada Pact. Rarely on trade issues do you see this unanimity.

The third point, in closing I would make, I think Congress has to take a larger look than just the Canadian pact when they go on to look at reviewing implementation of this agreement. It would be a terrible signal as we go into national and international GATT negotiations if a pact that was reached between the leaders of the countries that have the longest continuous border and the most amicable relations basically in the history of any two countries, if these two countries could not reach this kind of agreement, what kind of a signal does that send to the rest of the world?

Thank you very much, Mr. Chairman.

[The statement of William Lilley follows:]

STATEMENT OF WILLIAM LILLEY III
PRESIDENT, AMERICAN BUSINESS CONFERENCE
BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

February 26, 1988

Mr. Chairman and members of the Subcommittee, I am pleased to testify today on behalf of the American Business Conference (ABC), a coalition of chief executives of 100 fast-growing midsize companies representing all sectors of the economy. We applaud your decision to hold hearings on the single most significant trade negotiation in recent years, the U.S. - Canadian Free Trade Agreement. This Subcommittee and the Committee on Ways and Means as a whole will obviously play a key role in the evaluation and final dispensation of the Agreement. The executives of the American Business Conference hope that at the end of that process Congress will pass implementing legislation thereby bringing the Agreement into effect.

The American Business Conference has long been an advocate of free trade negotiations with Canada. ABC was a founding member of the American Coalition for Trade Expansion with Canada (ACTE/CAN), an informal group of companies and associations of all sizes united in support of more open trade with Canada.

Formed in early June 1987, ACTE/CAN had as its initial mission the generation of private sector support for the successful completion of the Canadian negotiations. We made clear that support for the negotiating process did not imply an a priori acceptance of the agreement itself. Members had the option of leaving the coalition if they were unhappy with the final text.

Since President Reagan and Prime Minister Mulroney signed the agreement on January 2, only about two dozen companies and associations have chosen to leave ACTE/CAN. At the same time, several dozen new companies and associations have signed on. The net result is a coalition with over 530 members rededicated to seeing the Free Trade Agreement through Congress to final implementation. ACTE/CAN stands today as the strongest and most diverse private sector group ever created to support a major legislative initiative.

Alone and in conjunction with ACTE/CAN, the American Business Conference has been urging Congressional acceptance of the Free Trade Agreement for the simplest of reasons: the pact is in the best interest of our members.

At present, approximately forty percent of ABC companies do business in Canada, a surprisingly small number given the international orientation of most of our members. If the Free Trade Agreement is enacted, we estimate that as many as seventy percent will enter the Canadian market.

Most of this increase will result from the elimination of a broad number of tariffs and customs restrictions, restrictions that have long been characteristic of the Canadian economy. While tariff and customs issues may seem prosaic to some, their presence often is enough to dissuade small and medium size companies from venturing into the Canadian market. Tariffs can make a commitment to foreign markets prohibitively expensive. In addition, small and medium size firms often lack sufficient staff to handle routinely the problems accompanying excessive customs regulations.

The desirability of encouraging medium size and small companies to export is obvious. These are the firms creating jobs in the United States. ABC firms, for example, create new jobs at an average rate of 14% per year. Canada is a likely starting point for fledgling exporters. It is a close, highly sophisticated, and, allowing for cultural differences, familiar market. By eliminating or substantially reducing tariff and customs barriers, the free trade pact will facilitate the transition many domestic American firms must make to multinational, exporting companies.

Of course, those ABC firms already doing business in Canada will also benefit from this new agreement. To take three examples, companies as diverse as A.T. Cross (writing instruments), Herman Miller (office furniture), and Neutrogena (personal care products) find their exports to Canada burdened by tariffs of 13%, 15%, and 11% respectively. The Free Trade Agreement would rescind those penalties and, as a result, improve the competitiveness of these and other ABC firms that have entered the Canadian market.

On another point of interest to the Subcommittee, ABC executives support the agreement's proposal for a binational dispute settlement panel. Such a panel would leave intact our nation's dumping and countervailing duty laws while at the same time creating an efficient mechanism for settling differences in fact and interpretation. I leave to other, better qualified commentators the task of exploring the legal precedents for such a dispute settlement mechanism. I would only point out that a binational panel promises to rationalize what has long been a murky process of dispute settlement. Our members welcome that prospect. I cannot imagine such a mechanism that does not in some way entail binational cooperation.

In sum, the United States - Canadian Free Trade Agreement is a model for bilateral market-opening trade negotiations. Spanning a number of sectors and based on a traditional concept of reciprocity, it promises substantially to increase what is already this country's most important trade relationship. For medium size and smaller American companies in particular the Free Trade Agreement offers an opportunity to begin or to expand export opportunities.

The American Business Conference hopes that Congress, in consultation with the Reagan Administration, can move quickly to draft and enact legislation implementing the Free Trade Agreement. No other trade legislation currently pending enjoys the same degree of business support or promises as much for the continued health of our economy.

Chairman GIBBONS. Thank you, sir.

The next witness is Mr. McKevitt.

STATEMENT OF JAMES D. "MIKE" McKEVITT, REPRESENTATIVE, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, AMERICAN COALITION FOR TRADE EXPANSION WITH CANADA

Mr. McKEVITT. Thank you.

My name is James D. "Mike" McKevitt. I appear as a member of the National Federation of Independent Business, and as a participant of the American Coalition for Trade Expansion with Canada. As a member of NFIB, a former NFIB employee, and a member of the Small Business Committee of the 92d Congress, I have represented small businesses for the past 18 years. Based on these experiences, I would like to present you with some insights relative to U.S. small business in exporting, particularly as it relates to Canada.

First of all, Mr. Chairman, Mr. Schulze, it is a learning ground, Canada is a learning ground for small businesses. Over one-third of our 500,000 membership in exporting endeavors, those who are involved in exporting, begin with Canada; it is close to your State, Mr. Schulze, as you well know. So from that aspect, it is No. 1.

No. 2, is the English language. Small business is skittish about getting into exporting, and yet I have talked to some members, like one of our members in Denver, who said once I started, it was stepping into a soft pair of slippers. Now he is selling electronic testing equipment to countries like Japan and West Germany. I think that is a big point there.

No. 2, I talked with one of our, one of my fellow members in Pocomoke, MD, who is in the telemarketing business who sells hardware and user products like drill bits, fasteners and the like, and he said "I would love to sell in Canada." He said, "The problem is restrictions of tariff takes all the money motive out of it." He says, "I hope we are successful in seeing that brought about because I would begin selling right away."

Three, an age-old problem for small business is paper work. As a small business person will tell you, it began when they hired their first employee and goes from there. Paper work reduction under this act and also less of a hassle at the border would be a great assistance in developing trade for small business in Canada.

Four, which is somewhat of a sleeper issue but which is there in the pact as well, and that is the new procurement opportunities. It is interesting, Mr. Chairman, over 30 percent of NFIB's 5,000 plus members are involved in some form of procurement, not full-time, but just a part of it. In most cases, that is a difference between profit and loss so far as that small business member is concerned. So here is an opportunity now to go into procurement in Canada as well, and ironically our sister organization, which has over 100,000 members in Canada, is equally interested in seeing this come to pass, as is the National Federation of Independent Business.

An age-old problem, and particularly during the last energy crisis, of which you are both aware, is a problem of energy itself, the availability of energy and the cost of energy. It is right up there in the big three, inflation, interest rates and energy costs.

Were we to successfully open the doors here, we see greater energy availability and competitive pricing, particularly during the crunch which is sometimes a difference of continuing in our business or not.

Finally, in the last two points, I think this is the door opener to other opportunities. If it is Canada, what is next? What about Taiwan, what about Korea, South Korea in particular? What about the pressure that puts on Japan and other countries, and what about the fact in opening opportunities for us in the small business area, if we start there and say let's take a shot at it, as that member in Denver said, and now is in Japan and Germany and other countries, if we can't do it in Canada, where are we going to do it? Successful outcome of this legislation will send a signal to the rest of the world between these two allies, which was manifested so well in the Olympics this past 2 weeks of the rapport between these two border countries.

I hope you will find your way clear to report this out successfully.

Thank you.

[The statement of James D. "Mike" McKevitt follows:]

NFIB

National Federation of
Independent Business

STATEMENT OF

JAMES D. "MIKE" MCKEVITT

FOR

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

Before: Subcommittee on Trade of the House Ways and Means Committee

Subject: U.S./Canada Trade Agreement

Date: February 26, 1988

Mr. Chairman and Members of the Committee, my name is James D. "Mike" McKevitt, and I appear today as a member of the National Federation of Independent Business and as a participant of the American Coalition for Trade Expansion with Canada.

As a member of NFIB, a former NFIB employee, and a former member of the House Small Business Committee in the 92nd Congress, I have associated with and represented U.S. small businesses for the past eighteen years. Based on these experiences, I would like to present you with some insights relative to U.S. small business and exporting, particularly as it relates to Canada. My purpose is to spell out the benefits and interests of U.S. small business relative to the proposed trade pact between the United States and Canada.

Background on Small Business and Exporting

In 1984-1985, NFIB conducted a survey of its membership on trade and exporting. The survey was conducted as follows.

A sample of 7500 firms was randomly chosen from the roster of the NFIB by selecting every seventh firm from SIC codes 100-149 and 200-399. A letter from NFIB President John Sloan accompanied the questionnaire to show its importance. A second mailing 10 days after the initial mailing with another questionnaire was used to increase the response rate. A total of 2430 questionnaires were returned, for an overall response rate of 32.4%. Usable returns were selected based on whether the questionnaire was substantially complete. A total of 2267 returns met the criteria, which resulted in a 30.2% usable return rate.

Those who were polled in the survey represented a broad spectrum of small mining and manufacturing businesses. The breakout is as follows:

Suite 700
600 Maryland Ave. S.W.
Washington, DC 20024
(202) 554-9000

The Guardian of
Small Business

MINING AND MANUFACTURING SMALL BUSINESS BY SELECTED SIC's: A COMPARISON OF NATIONAL AND SAMPLE RESPONDENTS

Industry	Small Business[1] N	Sample Respondents N	Small Business[1] %	Sample %
Mining	17,827	133	6.4	5.9
Food & Fiber	43,418	179	15.7	7.9
Wood	40,009	299	14.4	13.2
Printing & Publishing	38,744	285	14.0	12.5
Chemicals, Rubber, etc.	30,579	263	11.0	11.6
Metals	30,996	525	11.2	23.1
Tools & Machines	38,818	226	14.0	10.0
Equipment & Instruments	36,702	251	13.2	11.1
Other	N.A.	122	N.A.	5.3
Total	277,093	2283	99.9	100.0

Source: [1] Bureau of the Census, Department of Commerce, Enterprise Statistics, 1977

Some of the facts revealed by the survey were:

A. Few small businesses export. Of those which do export, foreign sales usually account for less than 10% of total sales.

B. Exporting small manufacturers are much larger on average than non-exporters.

C. The initial export sale tends to be the product of an unsolicited order for a very small amount from a firm in an English-speaking country. It is filled by the American firm very rapidly.

D. The single most important motivation for a firm to enter the export market is an unsolicited order from abroad. Profit potential -- largely unrealized -- and the "only way to expand" follow as motivating factors, though far behind unsolicited orders.

Close proximity to an English-speaking country is a major factor in developing small business exporting. Canada was the destination for nearly one in three (32.4%) first export sales.

Many exporters are within 250 miles of their export market. Boston is about 250 miles from Montreal. Pittsburgh is within 250 miles of Toronto. Thus, it is not always necessary to have a wide area in order to be an exporter, but there exists an unquestionable relationship between market area and the propensity to export.

Over three in five (62%) of the surveyed firms reported their first export sale to be the result of an unsolicited order from abroad. Interestingly, this pattern seemed to hold no matter how active the firm eventually became in the export market. More than 60% of both regular and occasional exporters started with an unsolicited order. That was just six percentage points less than those who no longer export. Even a majority of those now exporting through an intermediary began their international careers in such a reactive manner. Approximately half of these initial export sales (by number) involved customers in English-speaking countries.

U.S./Canada Trade Agreement: Benefits for Small Business

Small firms with the potential to export, and those which export now, stand to benefit greatly from the U.S./Canada trade agreement. By reducing barriers to trade, such as high tariffs and burdensome paperwork, this agreement will open doors in a country where small business is likely to look for new markets.

Tariffs are currently an obvious barrier for small business exporting into Canada. One NFIB member who telemarkets end user hardware products (e.g. drill bits, fasteners, etc.) advised me recently he relishes entry into the Canadian market, but not until the high tariffs presently in existence are phased out. He sees great potential for sales in Canada for his business.

Paperwork regulations by the U.S. and Canadian governments and bureaucratic hassles at the border have been great deterrents for smaller U.S. businesses who do not have the personnel and/or operating budget to cope with these problems. They are already burdened with an inordinate amount of domestic regulations and paperwork. Naturally, they lose interest in Canadian trade when they learn that larger, even more unreasonable amounts of red tape are in store. Couple that with small sales at entry levels and minimal profits lessened by significant tariffs, and an already skeptical small business person becomes totally disinterested.

The U.S./Canada trade agreement will also open up new opportunites for small firms in areas such as government procurement. The biggest market in the U.S. today is contracts for procurement of goods and services with Federal and state governments. One-fourth of the U.S. market (contracts awarded) go to small businesses. These numbers do not increase significantly annually.

Yet a smaller business can perform quicker and better in the time of delivery, and can offer lower pricing and better quality control over the delivered product or service. They also respond quickly to changes in specifications.

To illustrate the vastness of this opportunity, over 30% of NFIB's 500,000 plus members perform _part_ of their services or supply _part_ of their goods to Federal and state branches in the United States.

They are _not totally_ dependent upon these procurement contracts; however, oftentimes these contracts are the difference between profit and loss in the operation of the business.

There is provided within the proposed treaty with Canada opportunity for a significant number of procurement contracts with the Canadian government and its provinces. Although projections as to potential sales are unavailable, based upon the U.S. experience, this is a noteworthy feature of the proposed treaty.

An eventual free trade policy with Canada, in my opinion, would bring dramatic increases of small business participation in exporting products and services to Canada. Present day restrictions make Canada a virtually unmapped economic continent for the vast majority of U.S. small and medium sized businesses. The U.S./Canada trade agreement will remove many barriers and open many new doors.

Canada can then serve as a learning ground. Taking that first step in exporting is a big one for a small business. Canada is the most popular country for exporting because of proximity and universal language. Talk to a small business owner who has successfully made that first step, and you are talking to a convert and strong advocate.

One of my fellow NFIB members in Colorado, who now sells electronic testing equipment in the countries of Japan and West Germany, began his "experiment" in Canada. His business sales have soared, and so have the number of jobs in his company. One must remember that small business in the United States is basically labor intensive. Growth in small business directly reflects growth in U.S. jobs.

Beyond benefitting small exporting firms and spurring job creation, the U.S./Canada trade agreement will positively impact the U.S. economy in other ways. NFIB surveys over the years continually point out the dramatic effect that high interest rates, high inflation rates, and fluctuating energy costs have on long-term continuity for a small business operating close to the margin. The fact that the proposed treaty opens new avenues for energy sources with more competitive pricing should also be a shot in the arm for U.S. small business.

Conclusion

A century of deliberations over this subject is long enough. U.S. small business must be aided and encouraged to participate in the rapid development of world trade and competition.

Small business is "big business" in the United States and the principal new job provider over the past decade. With a new learning ground in Canada for U.S. small business exporting, more jobs and a stronger U.S. economy would be a logical aftermath.

If we are successful with this trade agreement, what is to stop us from future free trade agreements with such countries as Taiwan and South Korea? Success there would bring further pressures and motivation on other major industrial powers.

If we don't successfully enter into such an agreement, one must ask, who can we agree with in the future and what will be the outcome of our long-term trading opportunities?

0316T

Chairman GIBBONS. We will now hear from Mr. Freeman.

STATEMENT OF HARRY L. FREEMAN, EXECUTIVE VICE PRESIDENT, AMERICAN EXPRESS CO., AMERICAN COALITION FOR TRADE EXPANSION WITH CANADA

Mr. FREEMAN. Thank you.

I would like to include in my testimony a list of the members of the American Coalition for Trade Expansion in Canada.

Chairman GIBBONS. Let me say at this point, without objection, all statements will be included in the record in full.

Mr. FREEMAN. American Express is lead company of the coalition and strongly favors the free trade agreement with Canada. We just heard from Mr. Lilley and Mr. McKevitt who represent small independent business and the larger end of medium-size business, and I guess I am here representing the bigger size of big business.

What are the common elements that would bring businesses of all sizes to come together to support this? I think there are just a very few basic things I want to say about it. First, toward Canada there is a major reservoir of good will, toward Canada, who is our friend, our neighbor and most important closest national security ally.

On the other hand, these were very very long, very tough negotiations. I don't think there has been a tougher negotiation that we can recall because virtually every industry in the United States and Canada was impacted by it. With GATT and others, which are very very important, you don't get as much intensity as you do between the United States and Canada. Nevertheless, after a lot of hours and breakups and coming back together and last-minute this and that, they pulled it off and signed it on January 2, and I think it is a historic agreement.

Is it a panacea? No. I think it is a terrific breakthrough in many areas, certainly a net benefit to both Canada and the United States.

What are some of those benefits in general terms? First, as has been pointed out, the elimination of tariffs, either immediately or 5 years, or phasing out at the latest over 10 years of tariffs going into Canada from the United States alone is worth all of the time and support of the free trade agreement.

Second, when you get national treatment of goods and services in Canada coming from the United States, that is very important. The technical standards provisions, which are sort of the fine print in the trade agreement, are extremely important. There are free trade markets being created for energy products on both sides of the border; this is extremely important for both individual and institutional consumers. The temporary business visitor problem, which has been a real issue in terms of hassle at the border, that should be removed under the terms of the agreement. This is one of the real problems in doing business with Canada.

And, of course, there is a historic provision regarding both services and financial services. Financial services was broken out for special treatment. This is the first trade agreement that actually gets into detail on services. I think it was perhaps 8 or 9 years ago when I came before this committee and said we ought to start working on services, and you said "right on!" The 1984 trade agreement was the first trade agreement that took care of services and made them on a par with goods. This is the first trade agreement that gets into any detail on services.

Now, does it cover everybody? No. Does it get everything we wanted? No. But it went a long, long way, and it is mainly prospective barriers to exports and operations of service exporters and providers from the United States into Canada. We think it is a major accomplishment, and we support it very very strongly.

Another area that is a first is the whole area of investment. There has been a lot of restrictions on investment in Canada. If you are a certain size, you are subjected to a lot of different reviews. Those come off as well. Only the very large acquisitions of Canadian companies would be subject to review. That is a very major first.

Some of the other areas we wanted we didn't get, such as intellectual property, and we are going to strive for that in the GATT, and it is too bad it is not in the FTA. I don't think we can say the agreement is defective in a serious way, because it didn't cover everybody. They simply couldn't get everything into it.

What does this mean in dollars and cents for U.S. business? I think it is impossible to measure that precisely, it has to be a net good. We think American companies will export both goods and services into Canada and create jobs in the United States. We think the treaty is probably slightly more favorable to Canada because of the large U.S. market they will have guaranteed access to. From our point of view, it is increased access to a market the size of California. California is a big, big market.

Now, assuming this is passed by the Congress and the Parliament and comes into force January 1, 1989, what then happens? I don't think we will see a mad rush from the United States into Canada. What happens in all sizes of businesses is all of a sudden you are given an option to do something you couldn't do before.

In my own company, American Express, we are already operating in some of our businesses in Canada; some of them we can't operate. I am certain come 1989, we will have our strategic planning people take a look at the businesses we might operate in Canada, and some months after that we might make a decision to say we are going to try mutual funds or we will try insurance. I think particularly in financial services, larger companies will be looking at what I would call a niche strategy, looking for niches here, a niche there, to go into the Canadian market.

Given the huge size of the five very large chartered banks in Canada, which really dominate the financial scene there, I don't think anybody is going to take those guys head on. It is a great opportunity to say okay, can we have some products we couldn't do before? Can we do that now? I think that is for firms of all sizes. We are now given an option to export we never had before.

Of course, our Canadian firms will be doing exactly the same, and we will have more competition in the United States and more competition usually I think will benefit the consumer of goods and services in the United States.

The precedent that my colleagues mentioned in GATT and other trade agreements is extremely valuable. Going into GATT right now, we will have first, the first trade agreement that covers services and investment; secondly, we will have an experienced negotiating team in the United States and indeed the Canadian team that has covered these subjects and prove it can be done.

We would like to do it better in GATT, and I think we will do it better. For the nay-sayers on services that said you can't do it, it has been done.

I would like to say, Mr. Chairman, you have been a particular advocate for trade in services, we appreciate that, and we are making progress. A few years from now I think we will have it in the GATT.

The other day the Governors met in their semiannual meeting in Washington, the National Governors' Association voted 30 to 5 to endorse free trade with Canada. I believe at least 10 were absent. There was some debate over the question of U.S. territories in the agreement, and I am not familiar with that in detail. That night a number of us had dinner with the Governors and a number of CEOs from some of the largest American companies, such as AT&T, General Motors, Johnson & Johnson, my own company, and so forth. I was struck by the unanimity and strong support throughout the business community and the business community of all sizes. Those were the very large employers, the multinationals.

We didn't talk about whether we supported it. We talked for 3 hours about how do we get this thing through the Congress; how do we do it as soon as possible; and the benefits of it and the impact on the GATT; and how to move GATT forward.

With those comments, Mr. Chairman, I would like to rest and urge that you have a timely and favorable passage of the Canadian agreement.

Thank you very much.

[The statement of Harry L. Freeman follows:]

STATEMENT OF HARRY L. FREEMAN, AMERICAN EXPRESS CO., AND THE AMERICAN COALITION FOR TRADE EXPANSION WITH CANADA

Mr. Chairman and members of the Committee I am pleased to be here today on behalf of my own company, American Express, as well as the American Coalition for Trade Expansion with Canada. ACTE-CAN is a coalition of more than 500 companies and business associations that have joined together for the sole purpose of expressing support for the U.S.-Canada Free Trade Agreement. These 500 include large, medium and small businesses from a wide range of sectors and virtually every region of the country. In addition to the American Business Conference and the National Federation of Independent Business, which are represented on this panel, ACTE-CAN includes every major American business organization concerned with U.S. trade policy as well as many of the largest export-oriented companies in the country.

In fact, the U.S.-Canada Trade Agreement has produced a unanimity of view in the U.S. business community that is almost unique.

My own company's support for the FTA is based on several considerations. First, American Express operates today in more than 150 countries. All of our businesses -- charge cards, travel, banking, asset management, securities, data processing -- rely on a healthy and growing international trade environment, defined as the freest possible movement of ideas, information, goods, and people internationally. A liberal environment for international trade is good for our business. The U.S.-Canada Free Trade Agreement advances that cause significantly.

We are particularly pleased that the FTA addresses trade in services -- the first time in any major international trade agreement. My company has long advocated the establishment of a multilateral agreement on services in GATT. The U.S.-Canada agreement is an important first step toward this goal.

The U.S.-Canada agreement also provides some specific benefits for our current and future business with Canada. American Express services have been sold in Canada for a hundred years. After the United States, Canada is the second largest market for American Express Cards. The services agreement gives us long term guarantees that this and other American Express businesses in Canada will continue to get equal treatment and unobstructed access to Canada.

In addition, one of the major gains of the Free Trade Agreement was the elimination of many of Canada's barriers to U.S. financial services. Under the agreement, financial services companies like mine will be able to establish, diversify and expand on roughly the same basis as Canadian financial institutions. It frees U.S. bank subsidiaries from current limits on markets share and asset growth. It eliminates many Canadian restrictions on foreign ownership of banks, insurance, and trust businesses in Canada, and it allows U.S. financial companies to diversify into different financial services on the same basis as Canadian firms.

Now let me give you an idea of why so many other businesses and trade associations in this country have rallied in support of the agreement.

Trade relations between the U.S. and Canada have traditionally been close. We are each other's best customer. One Canadian province -- Ontario -- takes more U.S. exports than all of Japan. U.S. citizens have more invested in Canada than any other country, and vice versa. And our bilateral economic relationship is growing faster than with almost any other country.

Nevertheless, there is substantial room for improvement; and because our economic relationship is so big, so diverse, and so important, even small improvements in trade have the potential for producing big gains in efficiency, employment, and competitiveness. In fact, the FTA makes big improvements in the U.S.-Canada trade and investment relationship, and will produce major long-term economic benefits.

The agreement removes all tariffs within ten years. Canada's tariffs are roughly twice comparable U.S. rates. Besides tariffs, the FTA removes many other non-tariff restrictions on the movement of goods between the two countries. For many U.S. firms those tariffs and nontariff barriers are all it takes to keep them from competing in the Canadian market. Elimination of these obstacles makes current exporters to Canada more competitive and will enable a number of U.S. companies to become exporters for the first time.

As I mentioned earlier, the FTA sets out rules of the road that will ensure that U.S. services get a fair shake in Canada. More than 150 different services industries -- ranging from insurance to accountants to packing and crating -- are protected from discriminatory treatment and market access barriers. Because of its proximity and common language, Canada is a natural market for U.S. services providers. With the guarantees established in the FTA, many U.S. services companies can become exporters for the first time. As I mentioned the agreement also eliminates some major Canadian obstacles to U.S. financial services market.

The agreement will make it easier for people to move across the border to do business. It is relatively easy for a U.S. citizens to get into Canada, unless he or she is going to provide a service. If you are selling a product that requires after-sales service and maintenance, that can be a big obstacle. The FTA should guarantee that service workers won't be barred from entering Canada.

The agreement establishes a North American free market for energy products. It gives U.S. consumers of energy -- both individuals and institutions -- guaranteed, nondiscriminatory access to Canadian energy supplies, even in times of shortage. This has tremendous implications for U.S. energy security over the long term. Since energy is major cost factor for many U.S. manufacturers, free trade in energy is a definite plus for U.S. industrial competitiveness.

The agreement on investment improves access for U.S. investors in Canada. It eliminates Canadian screening of all indirect investments over the next five years, raises the threshold for screening of direct investments, provides for national treatment and prohibits certain performance requirements as a condition for investment. These are positive developments which lay the groundwork for future liberalization in investment.

The FTA establishes a Commission to oversee the implementation of the agreement and a special mechanism for disputes over subsidies and dumping. These mechanisms should make trade relations more transparent and predictable for both countries. It is important to note, however, that the FTA accomplishes this without any change or dilution of U.S. trade law.

It is these kinds of achievements in the FTA that have elicited such widespread U.S. business support. There are certainly some gaps -- intellectual property and the so-called "cultural industries, like film and broadcasting -- aren't covered at all. Other areas, like the investment chapter, eliminate some, but not all all of the problems. However, on balance the agreement is a major plus for U.S. exporters and investors.

The agreement should be seen only as a first step; the beginning of a long-term process of aggressive trade liberalization between the two countries. If the U.S. fails to adopt the agreement, that process will almost certainly stop. Indeed, those in this country who are disappointed with this agreement will be even less likely to achieve there aims without it.

The FTA comes at a time of great competitive challenge from the Pacific basin. At the same time, the European Community is moving aggressively to break down its remaining internal barriers to become the third pole in global trade competition by 1992. European integration will offer European companies tremendous competitive advantages. Under the FTA, the U.S. and Canada have an opportunity to meet these competitive challenges from the East and West by increasing the efficiency and scale of North American production, and by creating whole new groups of exporters among companies that have heretofore confined themselves within their national borders.

The FTA has also emerged at a time when the world's trading nations are about to face up to some hard decisions in the Uruguay Round. The U.S.-Canada agreement is not only consistent with GATT's rules for bilateral trade liberalization, it gives a substantial boost to the Uruguay Round process. It shows how trade rules can be extended to important new areas -- like services and investment. More importantly, it sends the signal that the U.S. is willing and able to pursue bilateral channels for opening up world markets if our multilateral trading partners are unwilling to make the necessary progress in GATT.

Conversely, if the U.S. fails to ratify the agreement, we will have sent a devastating message to the rest of the world about our ability to negotiate open world markets. We also would have to expect a deterioration in trade relations with Canada, in the treatment of U.S. investors, and in our bilateral strategic relationship.

U.S. competitiveness in world markets is showing marked signs of recovery. Will we capitalize on our rediscovered vitality by aggressively moving to open up foreign markets -- as we have with Canada -- and by facing up to the essential challenge of global competition? If we do not, we can only to find ourselves more vulnerable, with fewer bargaining chips in the future. I believe that approval of the FTA sends the right message -- that the U.S. is committed to remaining a worldclass competitor.

Chairman GIBBONS. I want to thank each one of you for thoughtful statements and thorough statements.

I don't have any questions of you. I usually get along very well with people who agree with me.

Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

Let me restate that I agree in the long run that a Canadian-United States agreement is in all of our best interests. I think it was Mr. Freeman who said this was worked out at the last minute in a dramatic fashion.

My view is a little bit different, I think, than that the Canadians walked out and we crawled back on our hands and knees. We were out-negotiated. I am disappointed in the fact that we were out-negotiated in a somewhat dramatic fashion.

Mr. Lilley, in your example of the three companies, each of them perhaps will be able to sell their products in 5 years, and that is well and good. But why won't they be able to sell their products the day it is signed?

Our negotiators failed, in my opinion, to get a degree of symmetrical access. Canadian tariffs are historically about double ours, and we agreed to reduce them over a 5- or 10-year period. During that period their tariff will still be double our tariffs. I think that was a poor way to negotiate.

Again, in the long run, yes, it is going to work out, but in the short run I don't think that we achieved symmetry in the negotiations.

A bilateral trade agreement should be equitable. I think we should have been able to get more from Canada than we could from GATT multilateral negotiations.

I agree with the statement, "if we can't do it with Canada, we can't do it with anybody." That is why I want to see these negotiations be successful. We are also going to have that thrown back at us in GATT. If you couldn't do anything on intellectual property rights and cultural problems with Canada, how do you expect us to be successful on these issues in negotiations halfway around the world? I think we lost a major opportunity with Canada.

I also agree with the statement that Canada is probably a little more advantaged by this than we are. They achieve access to our huge market, while their market is relatively small. But I do have hopes for the future.

I believe it was Mr. Freeman who discussed investment policy, and I presume all of you have looked into this during negotiations. I would like you to go over with me what Canada's current policy is with respect to reviewing foreign investments.

Does anybody want to detail for me what that policy is now?

Mr. FREEMAN. Well, Mr. Schulze, I think the investment policy—I mean all these negotiations, all the points you made—have some merit to them. I think it was a very difficult negotiation. Everybody wanted more. We didn't get everything we wanted from the point of view of the private sector, but we got a lot more than we would have had if there hadn't been an agreement.

On investment, I think we would prefer to have had even more progress on reducing those barriers——

Mr. SCHULZE. What is Canada's policy now?

Mr. **Freeman**. Take financial services. I believe the foreign banking sector is limited to something like 12 or 14 percent of banking assets can be in the foreign—that is completely dropped. There are prohibitions against foreign firms entering into insurance.

Mr. **Schulze**. In other words, is there a panel or board or something, or is that just a flat rule?

Mr. **Freeman**. There is a flat rule. There is a financial investment review agency. That has jurisdiction over all foreign investments.

Mr. **Schulze**. How does that work? If I want to make an acquisition or an investment——

Mr. **Freeman**. You go there, apply, and you wait a while, or wait a very long while. That would be removed for investments under $150 million——

Mr. **Schulze**. There is no rule or regulation that says it must be completed in 60 days, 90 days or 10 years?

Mr. **Freeman**. I can't answer that categorically, I'm sorry. But I know that it has been a real problem for American firms in many cases.

The idea that if you go and negotiate a deal and make an offer and so forth and it is conditional on a review board on the general merits of it, as distinguished from——

Mr. **Schulze**. You deal not only with the company with whom you are negotiating, but also this review board?

Mr. **Freeman**. That is right.

Mr. **Schulze**. How will that be changed under this agreement?

Mr. **Freeman**. The review board would lose authority for investments under $150 million——

Mr. **Schulze**. It will be there, but only those companies or acquisitions over $150 million will be subject to the revenue board?

Mr. **Freeman**. That is my understanding.

Mr. **Schulze**. How does that relate to our policy in the same area?

Mr. **Freeman**. We don't have a general review process for foreign investments. We have, like Canada, certain areas that are reserved for American nationals, television, broadcasting, certain national security areas. All countries have that. We don't have a general prohibition on foreign investments.

Mr. **Schulze**. So Canadian companies are not allowed to own television stations in the United States?

Mr. **Freeman**. There are certain restrictions. Communications is a good example.

Mr. **Schulze**. But are Canadian firms or individuals allowed to own television stations in the United States?

Mr. **Freeman**. I believe they cannot control them—I think it is not more than 1 percent of interest. There are extreme limitations on certain areas of foreign investment in the United States. This is common throughout the world.

Mr. **Schulze**. 1 percent for any one individual?

Mr. **Freeman**. I do not know the exact detail. Sorry.

Mr. **Schulze**. You see, it seems to me—and I agree that we are making progress—but I think we could have made a lot more progress. Fine; if that is the way you want to do it, we are going to have some kind of limitation on Canadian investment. I think we all know there is a recent example—what was it?—Federated Department Stores, an American businessman, could make that same kind of deal in Canada today or after this agreement is in effect?

Mr. FREEMAN. That particular suggestion is an example of a Canadian company, and I don't know whether it is hostile, but at least bidding for an American company where an American company could not go bidding for the Canadian company because of the Canadian restrictions.

Mr. SCHULZE. That is why I say I think there is a lack of symmetry, there is a lack of equity and equal access on this thing.

Again, I realize in the long run it is going to be good, but I think that our negotiators could have gotten a lot more when we are giving away things.

One other thing. You stated also this would help businessmen in access to travel. One of the complaints that I have received from executives of companies doing business in Canada is that there is a very, very difficult process involved in buying property. If a Canadian comes down here and is a vice president of a company, he can move into Detroit, San Francisco, or Denver and buy a home and work.

I don't know this firsthand, but the executives of companies that go up there say it is virtually impossible for them to buy a home. It seems to me we should have some kind of symmetry in this area. Is that true?

Mr. FREEMAN. I don't know. I know there are the problems at the border and the airport or if you are driving by car—particularly the airport——

Mr. SCHULZE. Do you have American executives in Canada who have not had problems buying homes or property?

Mr. FREEMAN. We have had very few Americans. We try to have in Canada, as well as in any other foreign country, local nationals.

Mr. SCHULZE. So it could be a problem and you just are not——

Mr. FREEMAN. It could be a problem. I am not aware of it.

Mr. SCHULZE. Mr. Lilley, do you know if that is a problem?

Mr. LILLEY. No, but I want to expand on what Mr. Freeman said and what Mr. McKevitt said. The paperwork requirements at the border would be reduced under this, particularly for small and middle-sized businesses, which will have an upfront impact, and that is a procedure that goes into effect right away if the pact is implemented. That would be, for little companies, very advantageous.

I don't know about the property owners. I have not heard that.

Mr. SCHULZE. I don't want to belabor the point.

I would like to thank Mr. McKevitt, our former colleague. It is nice to have you before the committee again.

Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you very much, Mr. Chairman.

Thank you, gentlemen, for your testimony. I think I would like to ask just two questions.

Mr. Lilley, in your testimony you said that after the agreement was signed, only about 2 dozen companies and associations exercised their right to leave ACTE/CAN.

Could you give us some idea what kinds of companies chose to leave?

Mr. **Lilley**. The only single cluster of companies that I can—this is an association, like all other Washington associations, that requires people to pay some money to join, so we tend to get turnover regardless of the events. I was trying to be scrupulous in pinning a date before and a date after.

The only industry area where you would see commonality would be the movie, film, and television area, where some firms dropped out because, while their situation is not worsened under the agreement, there is inability of negotiators to bring it to the table on both sides.

That was merely moved off the table. Otherwise there was no—the change was de minimis.

Mr. **Pease**. Could you supply me by letter with a list of those firms or associations?

Mr. **Lilley**. Certainly.

Mr. **Pease**. Thank you.

[The following was subsequently received:]

ACTE/CAN MEMBERS
PHASE I
as of October 4, 1987

ABC Custom Cedar Homes, Inc.	Sonoma, CA
A-C Brake Co., Inc.	Louisville, KY
A.T. Cross Company	Lincoln, RI
ALCOA	Pittsburgh, PA
AMCA International Corporation	Hanover, NH
AT&T	New York, NY
Aaonton Group, Inc.	Plano, TX
Action Associates	Bloomington, MN
Aerospace Industries Association of America, Inc.	Washington, DC
Air Conditioning Contractors of America	Washington, DC
Air Conditioning and Refrigeration Institute	Arlington, VA
Alaska Quality Control & Technical Services, Ltd.	Anchorage, AK
Albert Seisler Machine Corp.	Mohnton, PA
Alderfer & Herm	Denver, CO
Allied-Signal International, Inc.	Morristown, NJ
Allis - Chalmers Corporation	West Allis, WI
Almerica Overseas, Inc.	Destin, FL
Alpha Research, Inc.	Glendale, WI
Alumax, Inc.	San Mateo, CA
Amatos, Inc.	Middletown, CT
Amerace Corporation	Hackettstown, NJ
Amerex Corporation	Trussville, AL
American Association of Exporters & Importers	New York, NY
American Association of Meat Processors	Elizabethtown, PA
American Business Conference	Washington, DC
American Cast Metals Association	Des Plaines, IL
American Council of Independent Laboratories	Washington, DC
American Electronics Association	Washington, DC
American Express Company	New York, NY
American Federation of Small Business	Chicago, IL
American Frozen Food Institute	McLean, VA
American Furniture Manufacturers Association	Washington, DC
American Institute of Marine Underwriters	New York, NY
American Institute of Small Business	Minneapolis, MN
American Newspaper Publishers Association	Washington, DC
American Retail Federation	Washington, DC
American Street Corridor Business Association	Philadelphia, PA
American Trucking Association	Alexandria, VA
Amigo Sales, Inc.	Bridgeport, MI
Archer Daniels Midland	Decatur, IL
Armtek Corporation	New Haven, CT
Arthur Andersen & Co.	Chicago, IL
Arthur Young	Dallas, TX
Artmor Plastics Corporation	Cumberland, MD
Associated Builders & Contractors	Washington, DC
Associated Lumber Industries, Inc.	Carbondale, IL
Association of American Publishers	Washington, DC

Association of Collegiate Entrepreneurs	Wichita, KS
Augat, Inc.	Mansfield, MA
Austad's	Sioux Falls, SD
Avon Products, Inc.	New York, NY
B.F. Goodrich Company	Akron, OH
BP America Inc.	Cleveland, OH
Babcock & Wilcox	New Orleans, LA
Baker Service Tools	Houston, TX
Baldor Electric Company	Port Smith, AR
Ball Corporation	Muncie, IN
Ball Publishing Company	Arcanum, OH
Barnes Group Inc.	Bristol, CT
Barrett Trailers, Inc.	Oklahoma City, OK
Barrios Technology, Inc.	Houston, TX
Bearings, Inc.	Cleveland, OH
Beckman Instruments, Inc.	Fullerton, CA
Bemis Manufacturing Company	Sheboygan Falls, WI
Bend Photo Center, Inc.	Bend, OR
Bernard R. Horn, Co.	Folcroft, PA
Better Business Bureau of Maricopa County	Mesa, AZ
Blair Cartage, Inc.	Newbury, OH
Blatt's Bakery	Put-in-Bay, OH
Bowes Manufacturing, Inc.	Solon, OH
Bristol-Myers Company	New York, NY
Brodart Company	Williamsport, PA
Brooklyn Union Gas Company	Brooklyn, NY
Brown Capital Management, Inc.	Baltimore, MD
Brown Deer Bank	Brown Deer, WI
Brown-Forman Corporation	Louisville, KY
Buffalo Forge Co.	Buffalo, NY
CPC International Inc.	Englewood Cliffs, NJ
Carbis Walker & Associates	Butler, PA
Cargill, Incorporated	Minneapolis, MN
Carolina Freight Carriers Corporation	Cherryville, NC
Cass County Abstract Company	Fargo, ND
Castite Systems, Inc.	Cleveland, OH
Champion International Corporation	Stamford, CT
Charles Beck Machine Corporation	King of Prussia, PA
Charles F. McAfee Architects Engineers Planners	Wichita, KS
Charter Medical Corporation	Macon, GA
Chattahoochee Business Group	Marietta, GA
Chevron Corp.	San Francisco, CA
Chicago Barter Corporation	Lombard, IL
Chicone Groves	Orlando, FL
Christy's	Ellwood City, PA
Citizens for a Sound Economy	Washington, DC
Clark Seals, Ltd.	Tulsa, OK
Claseman Management Services	St. Paul, MN
Climatic Control Company, Inc.	Milwaukee, WI
Coalition of Service Industries, Inc.	Washington, DC
Coca Cola, Co.	Washington, DC
Colborn's	Billings, MT
Coleco Industries, Inc.	West Hartford, CT
Columbia Chocolates By Mordens	Astoria, OR

Comdisco, Inc.	Rosemont, IL
Commercial Design Consultants	Milwaukee, WI
Committee for Small Business Exports	Aspen, CO
Comp-U-Card International, Inc.	Stamford, CT
Competition Cams, Inc.	Memphis, TN
Competitive Enterprise Institute	Washington, DC
Computer & Business Equipment Manufacturers Association	Washington, DC
Computer & Communications Industry Association	Washington, DC
Conco Systems, Inc.	Verona, PA
Concord Engineering, Inc.	Richmond, CA
Concord, Inc.	Fargo, ND
Consolidated Freightways, Inc.	Menlo Park,CA
Contact Systems Corporation	New York, NY
Control Data Corporation	Minneapolis, MN
Cooper Industries, Inc.	Houston, TX
Creative Management Concepts	Reading, PA
Curtis Circulation Company	Hackensack, NJ
Custom Engineering, Inc.	Englewood, CO
D&M Consulting & Brokerage, Inc.	Marshfield, WI
D-M-E Company	Madison Heights, MI
Dawg Luvers & Co.	Jesup, GA
Deere & Company	Moline, IL
Deering Lumber, Inc.	Biddeford, MA
Design & Manufacturing Corporation	Connersville, IN
Di-Rec Services	Dallas, TX
Distilled Spirits Council of the U.S., Inc	Washington, DC
Dollar Power Discount Store	San Francisco, CA
Donaldson Company, Inc.	Minneapolis, MN
Dow Chemical U.S.A.	Midland, MI
Dow Corning Corporation	Midland, MI
Dunkin' Donuts Incorporated	Randolph, MA
E. H. Curtin Insurance Agency	Cambridge, MA
E. J. Kearney & Company	Portland, ME
E. R. Clarke Associates, Inc.	Lake Forest, IL
Eastern Building Material Dealers Assoc.	Media, PA
ERA Steel Construction Corp.	White Plains, NY
Echlin Corp.	Branford, CT
Eclipse, Inc.	Rockford, IL
Econocorp, Inc.	Randolph, MA
Electro Rent Corporation	Santa Monica, CA
Elbert Bradshaw Enterprises	Carmel, IN
Emergency Committee for American Trade	Washington, DC
Enerco Technical Products, Inc.	Cleveland, OH
Ernst & Whinney	New York, NY
Ernst & Whinney International	New York, NY
Esselte Business Systems, Inc.	Garden City, NY
Event Specialists, Inc.	Anchorage, AK
Executive Report	Pittsburgh, PA
FMC Corporation	Chicago, IL
Fairchild Industries	Chantilly, VA
Fraser Paper, Limited	Madawaska, ME
Fila Associates	Miami, FL
First Bank System	Minneapolis, MN

Flambeau Corporation	Baraboo, WI
Flint Industrial Services	Albany, GA
Focus Electronics Inc.	Brooklyn, NY
Fort Howard Paper Company	Green Bay, WI
Fred Jones Manufacturing Company	Oklahoma City, OK
Fuqua Industries, Inc.	Atlanta, GA
G.D. Searle & Co.	Chicago, IL
GTE Corporation	Stamford, CT
Garrett Corporation	Torrance, CA
Gates Lear Jet Corporation	Tucson, AZ
Gatherings South, Inc.	Greenville, SC
Gene Boyer & Associates, Inc.	Beaver Dam, WI
Genentech, Inc.	S. San Francisco, CA
General Dynamics Corporation	St. Louis, MO
General Public Utilities Corporation	Parsippany, NJ
Gerber Industries, Inc.	St. Peters, MO
Glowacki Everhardt & Association, Inc.	Toledo, OH
Goldman Sachs	New York, NY
Goodyear Tire & Rubber Company	Akron, OH
Gorman-Rupp Co.	Waterbury, CT
Greater Newark Chamber of Commerce	Newark, NJ
Gregory Manufacturing Co., Inc.	Jackson, MS
Griffin Agency	Prospect, PA
Grit Publishing Company	Williamsport, PA
Grumman Corporation	Bethpage, NY
Gulf & Western	New York, NY
H.J. Heinz Company	Pittsburgh, PA
HMA International Business Development, Ltd.	Greensboro, NC
Half Price Books, Inc.	Dallas, TX
Hamilton Beach, Inc.	Waterbury, CT
Hartz Mountain Corporation	Harrison, NJ
Heat - Timer Corporation	Fairfield, NJ
Helene Curtis Industries	Chicago, IL
Hercules Engines, Inc.	Canton, OH
Herrmidifier Company, Inc.	Lancaster, PA
Hevi-Haul International Limited	Butler, WI
Hewlett-Packard Company	Palo Alto, CA
Hexagon Architecture Group Limited	Wyncote, PA
High-Tech International	Beltsville, MD
Hill & Associates	Madison, WI
Hoffman Air & Filtration Systems	East Syracue, NY
Holiday Corporation	Memphis, TN
Holloman Child Development Centers	Hampton, VA
Honeywell, Inc.	Minneapolis, MN
Horizon Resources Corporation	York, PA
Hotwatt, Inc.	Danvers, MA
Hunt Tractor, Inc.	Louisville, KY
ITBR, Inc.	Austin, TX
Illinois Lumber & Material Dealers Assoc.	Springfield, IL
Image Express	Southfield, MI
Imperial Schrade Corporation	New York, NY
Impressive Advance & Litho, Inc	Waynesboro, VA
Incom International Inc.	Pittsburgh, PA
Independent Bakers Association	Washington, DC

Industrial Commission of Arizona	Mesa, AZ
Industrial Heating Equipment Association	Arlington, VA
Informerific/Hexter & Associates	Cleveland, OH
Ingersoll-Rand Company	Woodcliff Lake, NJ
Intel Corporation	Santa Clara, CA
International Business Aviation Council, Ltd.	Washington, DC
International Business Machines Corp.	Armonk, NY
International Data Corporation	McLean, VA
International Franchise Association	Washington, DC
Interstate Electronics Corporation	Anaheim, CA
JGP Marketing Group International, Inc.	Livonia, MI
JLG Industries, Inc.	McConnellsburg, PA
Jack O'Connor's Quality Beef 'N Seafood	Bridgewater, NJ
Johnson & Johnson	New Brunswick, NJ
Jon Holtshopple & Associates	Madison, WI
Kustin Boot Company	Fort Worth, TX
Katy Industries, Inc.	Elgin, IL
Kentucky Manufacturing Co.	Louisville, KY
Kerr-Hays Co.	Ligonier, PA
Kimball Physics, Inc.	Wilton, NH
Kingsbury Machine Tool Corporation	Keene, NH
Knape & Vogt Manufacturing Company	Grand Rapids, MI
Knoll International Holdings, Inc.	New York, NY
Koester Corporation	Defiance, OH
L.R. Nelson Corporation	Peoria, VA
LC Technologies, Inc.	Fairfax, VA
Lafarge Corporation	Dallas, TX
Lamanite Enterprises Corp.	Clearfield, UT
Lancaster Laboratories, Inc.	Lancaster, PA
Laramy Products Co.	Lyndonville, VT
Lavelle Aircraft Co.	Philadelphia, PA
Lee, Theisen & Stegall	Phoenix, AZ
Lennox Industries Inc.	Dallas, TX
Lewis Ranches	Portland, OR
Lin-Art, Ltd.	Arlington Heights, IL
Litton Industries	Woodland Hills, CA
Longyear Company	Minneapolis, MN
Louisiana Association of Business and Industry	Baton Rouge, LA
Louisiana Retailers Association	Baton Rouge, LA
Louisville Plate Glass Company	Louisville, KY
Lowe's Companies, Inc.	North Wilkesboro, NC
Luken's Inc.	Coatesville, PA
Lumbermen Associates, Inc.	Philadelphia, PA
M. S. Hansson, Inc.	Boulder, CO
MDB, Inc.	Pittsburgh, PA
MDU Resources Group, Inc.	Bismarck, ND
Mack Trucks Inc.	Allentown, PA
Macmillan, Inc.	New York, NY
Maidenform, Inc.	New York, NY
Maine Machine Products Company	South Paris, ME
Maine Wild Blueberry Company	Machias, ME
Manufactured Buildings Components, Corp.	East Lansing, MO
Marco Wood Products	Walled Lake, MI
Margaret Coleman Associates	Hinsdale, IL

Marketing Communications Systems	Portland, OR
Marriott Corporation	Washington, DC
Marsh & McLennan, Inc.	New York, NY
Marshall & Associates	Topsfield, MA
Mary Kay Cosmetics	Dallas, TX
Mattel, Inc.	Hawthorne, CA
Mayflower Transit, Inc.	Indianapolis, IN
Maytag Corporation	Newton, IA
McIntosh, Inc.	Norfolk, NE
McLaurin Parking Co.	Raleigh, NC
McMinnville City Sanitary Service, Inc.	McMinnville, OR
Measurex Corporation	Cupertino, CA
Mel Boldt & Association	Mt. Prospect, IL
Mentholatum Company	Buffalo, NY
Merck & Co., Inc.	Rahway, NJ
Metal Treating Institute	Jacksonville Beach,FL
Metropolitan Life Insurance Company	New York, NY
Mid-Continent Cold Storage Co.	Omaha, NE
Milbar Corporation	Chargin Falls, OH
Minnesota Mining & Manufacturing Company (3M)	St. Paul, MN
Mobil Oil Corporation	New York, NY
MonArk Boat Company	Monticello, AR
Morton Buildings, Inc.	Morton, IL
Mosbacher Energy Company	Houston, TX
Mosler International	Hamilton, OH
Murphy Oil Corporation	El Dorado, AR
N. J. Chapter - National Association of Women Business Owners	Cherry Hill, NJ
NVRyan	Alexandria, VA
Nalco Chemical Company	Naperville, IL
National Association of Photographic Manufacturers	Harrison, NY
National Association of Printing Ink Manufacturers	Harrison, NY
National Association of Beverage Importers, Inc.	Washington, DC
National Association of Home Builders	Washington, DC
National Association of Manufacturers	Washington, DC
National Association of Women Business Owners	Chicago, IL
National Federation of Independent Business	Washington, DC
National Foreign Trade Council	New York, NY
National Frame Builders Association	Kansas, City, MO
National Hispanic Business Association	Chamblee, GA
National Lumber & Building Materials Dealers Association	Washington, DC
National Machine Machine Tool Builders Association	McLean, VA
National Retail Merchants Association	Washington, DC
National Small Business United	Washington, DC
National-American Wholesalers Grocers' Association	Washington, DC
Nestle Enterprises, Inc.	Solon, OH
New England Electric System	Westborough, MA
New Jersey Small Business Unity Council	Little Silver, NJ
Nicholson, Inc.	Helena, MT

North Haven Gardens	Dallas, TX
Northeastern Retail Lumbermen's Association	Rochester, NY
Northland Corporation	Greenville, MI
Northwest River Supplies, Inc.	Moscow, ID
O'Brien Communications	Del Mar, CA
Oakes & McClelland Company	Greenville, PA
Oakwood Markets, Inc.	Kingsport, TN
Occidental Chemical Corp.	Dallas, TX
Oneida Ltd.	Oneida, NY
PII Affiliates, Ltd.	Manchester, PA
PLM Companies, Inc.	San Francisco, CA
PMI/Taylor Advertising	Columbus, OH
Pacer Systems, Inc.	Billerica, MA
Pacific Interstate Company	Los Angeles, CA
Pacific Northwest International Trade Association	Seattle, WA
Paragon Electric Company, Inc	Two Rivers, WI
Parlette Tire Co., Inc.	Erie, PA
Peat Marwick Main & Co.	New York, NY
Pennwalt Corporation	Philadelphia, PA
People to People Associates	Lexington, MA
Pepsi-Cola International	Somers, NY
Perham Egg, Inc.	Perham, MN
Perlis Truckstops	Cordele, GA
Pet Incorporated	St. Louis, MO
Pharmaceutical Manufacturers Association	Washington, D.C.
Philips Industries Inc.	Dayton, OH
Photoscience, Inc.	Gaithersburg, MD
Picken Parts, Inc.	Fresno, CA
Plabell Rubber Products, Inc.	Toledo, OH
Plasma Energy Corp.	Raleigh, NC
Plasco, Inc.	Woburn, MA
Ply*Gem Industries, Inc.	New York, NY
Polaroid Corporation	Cambridge, MA
Powermax, Inc.	Columbus, OH
Pre-Paid Legal Services	Ada, OK
Precision Twist Drill Co.	Crystal Lake, IL
Prinova Co., Inc.	San Francisco, CA
Printing Industries of America	Arlington, VA
Procter & Gamble	Cincinnati, OH
Product Development Corporation	Little Rock, AR
Professional Service Corporation	Green Bay, WI
Professional Wealth Management, Inc.	Asheville, NC
Professional Women in Construction & Allied Industries	White Plains, NY
Progressive Management Enterprises, Ltd.	St. Louis, MO
Pulp & Paper Machinery Manufacturers' Association	Washington, DC
Queen Carpet Corporation	Dalton, GA
Queen City Industries, Inc.	Piqua, OH
Quick, Finan & Associates, Inc.	Washington, DC
R. R. Donnelley & Sons Company	Chicago, IL
RJR Nabisco	Winston-Salem, NC
Radio KDNO	Delano, CA

Ramada, Inc.	Phoenix, AZ
Recognition Equipment, Inc.	Dallas, TX
Recon/Optical, Inc.	Barrington, IL
Rexnard Inc.	Brookfield, WI
Rheem Manufacturing Company	New York, NY
Ridenour & Associates	Chicago, IL
Riordan, Crivello, Carlson & Menthkowski	Milwaukee, WI
Rockwell International Corp.	Pittsburgh, PA
Roll-o-matic, Inc.	Kansas City, MO
Rooney, Plotkin & Willey	Providence, RI
Rorer International Pharmaceuticals	Fort Washington, PA
Rotron Engineering Company, Inc.	Woburn, MA
Rudolph Beaver, Inc.	Waltham, MA
Rural Gravuce Services, Inc.	Madison, WI
Russ Berrie and Company, Inc.	Oakland, NJ
S. C. Johnson & Son, Inc.	Racine, WI
SNC Manufacturing Company	Oshkosh, WI
Sabre Yachts	South Casco, ME
Safeway Stores, Inc.	Oakland, CA
Samsonite Corporation	Denver, CO
Sandmeyer Steel Company	Philadelphia, PA
Sargent-Welch Scientific Company	Skokie, IL
Scientific-Atlanta, Inc.	Atlanta, GA
Scott Paper Company	Philadelphia, PA
Sears, Roebuck and Co.	Chicago, IL
Shaw Mudge & Co.	Stamford, CT
Shell Oil Company	Houston, TX
Sheridan & Fritz, P.C.	Harrisburg, PA
Siliconix Inc.	Santa Clara, CA
Simplex Time Recorder Company	Gardner, MA
Singer, Lewak, Greenbaum & Goldstein	Los Angeles, CA
Smada, Inc.	Phoenix, AZ
Small Business Foundation of America	Boston, MA
Small Business Hawaii, Inc.	Honolulu, HI
Small Business United of Missouri	St. Louis, MO
Smaller Business Associates of New England	Boston, MA
Smaller Manufacturers Council	Pittsburgh, PA
Smith Barney Inc.	New York, NY
Smith Rollinson	Alexandria, VA
Snider, Lewak, Greenbaum & Goldstein	Los Angeles, CA
Snyder General Corporation	Dallas, TX
Southern Connecticut Gas Company	Bridgeport, CT
Spacesaver Corporation	Fort Atkinson, WI
Specialized Carriers & Rigging Association	Alexandria, VA
Square One, Inc.	Madison, WI
Squibb Corporation	Princeton, NJ
Sta-Rite Overseas Corporation	Milwaukee, WI
Standard-Thomson Corporation	Waltham, MA
Stemco, Inc. Truck Products	Longview, TX
Steiner Shipyard, Inc.	Bayou La Batre, AL
Stone & Webster Engineering Corporation	Boston, MA
Storage Technology Corporation	Louisville, CO
Stripling-Blake Building Lumber Co., Inc	Austin, TX
Sun Electric Corporation	Crystal Lake, IL

Superior Technical Ceramics Corp.	St. Albans, VT
Syntex Corporation	Palo Alto, CA
T&H Building Supply	Redwood City, CA
TAPJAC Home Centers	Carthage, MO
TVI Creative Specialists	Washington, DC
Tandem Computers Incorporated	Cupertino, CA
Tandy Brands, Inc.	Fort Worth, TX
Tanner Systems, Inc.	Sauk Rapids, MN
Tatum Enterprises	Honolulu, HI
Technivest, Inc.	South Bend, IN
Ted Grob Sales, Inc.	Grafton, WI
Termiflex Corporation	Merrimack, NH
Terry Neese Personnel Services	Oklahoma City, OK
Texas Industries, Inc.	Dallas, TX
The Afro/Hispanic-American Chambers of Commerce	Bossier City, LA
The Americas Society	New York, NY
The Andersons	Maume, OH
The Black & Decker Corp.	Towson, MD
The Buffalo News	Buffalo, NY
The Calvert Gallery	Washington, DC
The Carlton Group	Richmond, VA
The Coca-Cola Company	New York, NY
The Collectors Guild Ltd.	Wilmington, NC
The Firestone Tire & Rubber	Akron, OH
The First Boston Corp.	New York, NY
The Free Press Media Group	Hendersonville, TN
The Fur Vault, Inc.	New York, NY
The Harodite Finishing Co., Inc.	North Dighton, MA
The Hoover Company	North Canton, OH
The Krughoff Company	Naperville, IL
The Moser Bag & Paper Co.	Cleveland, OH
The New England Council, Inc.	Boston, MA
The Pillsbury Company	Minneapolis, MN
The Price Company	San Diego, CA
The Principal Financial Group	Des Moines, IA
The Quillen Group	Groton, CT
The Singer Company	Stamford, CT
The Stackpole Corp.	Boston, MA
The Telemarketing Company	Chicago, IL
The United Illuminating Company	New Haven, CT
The Upjohn Company	Kalamazoo, MI
The Valspar Corporation	Minneapolis, MN
The Will-Burt Company	Orrville, OH
Thomas J. Seitz Co., Inc.	Racine, WI
Tingley Systems, Inc.	San Antonio, FL
Toledo Harbor Warehousing, Inc.	Toledo, OH
Tracor, Inc.	Austin, TX
TransTech, Inc.	East McKeesport, PA
Tri-M Corporation	Kennett Square, PA
Triangle Research Development Corp.	Research Triangle Park, NC
Trinity Industries, Inc.	Dallas, TX
Trouble Shooters, Inc.	Omaha, NE
Truck Trailer Manufacturers Association	Alexandria, VA

Trucking Services, Inc.	Dearborn Heights, MI
U.S. Axle, Inc	Pottstown, PA
U.S. Bearings & Drives of CA, Inc.	Santa Clara, CA
U.S. Council for International Business	Washington, DC
USG Corporation	Chicago, IL
Ultrasystems, Inc.	Irvine, CA
Unilever United States, Inc.	New York, NY
United Industries Inc.	Wichita, KS
Vanport Manufacturing, Inc.	Boring, OR
Village Green	Midland, MI
Vocational Rehabilitation Associates, Inc.	Eugene, OR
W. R. Grace & Company	New York, NY
W.H. Brady Co.	Milwaukee, WI
WIS, Inc.	Toledo, OH
Wainoco Oil Corporation	Houston, TX
Waldorf Corporation	St. Paul, MN
Wayer Corporation	Landover, MD
Western Publishing Company, Inc.	Racine, WI
Weyerhaeuser Company	Tacoma, WA
Whale Scientific, Inc.	Commerce City, CO
Whirlpool Corporation	Benton Harbor, MI
White Plains Iron, Inc.	New York, NY
Wholesale Florists & Florist Suppliers of America	Arlington, VA
William A. Price & Associates	Wheaton, IL
William H. Taylor & Company, Inc.	Allentown, PA
Wingspread Corporation	New York, NY
Women Entrepreneurs	Lincolnwood, IL
Women Featherbone Company	Gainesville, GA
Woodhead Industries, Inc.	Northbrook, IL
ZinYeast, Inc.	Marshfield, WI

Phase II

ACTE/CAN MEMBERS
as of October 18, 1988

ABC Custom Cedar Homes, Inc.	Sonoma, CA
ADC Telecommunications	Bloomington, MN
AT&T	New York, NY
A-C Brake Co., Inc.	Louisville, KY
A.T. Cross Company	Lincoln, RI
ADAPSO	Arlington, VA
ALCOA	Pittsburgh, PA
AMCA International Corporation	Hanover, NH
AMADOR COrporation	Taylors Falls, MN
AV-Alarm Corporation	Eugene, OR
Aaonton Group, Inc.	Plano, TX
Action Associates	Bloomington, MN
Aetna Life and Casualty Company	Hartford, CT
Aerospace Industries Association of America, Inc.	Washington, DC
Afro/Hispanic-American Chambers of Commerce	Bossier City, LA
Air Conditioning and Refrigeration Institute	Arlington, VA
Air Conditioning Contractors of America	Washington, DC
Alaska Quality Control & Technical Services, Ltd.	Anchorage, AK
Albert Seisler Machine Corporation	Mohnton, PA
Albert Trostel Packings, Ltd.	Lake Geneva, WI
Alderfer & Herm	Denver, CO
Allied-Signal International, Inc.	Morristown, NJ
Allis - Chalmers Corporation	West Allis, WI
Almerica Overseas, Inc.	Destin, FL
Alpha Research, Inc.	Glendale, WI
Alumax, Inc.	San Mateo, CA
Amana Refrigeration, Inc.	Amana, IA
Amatos, Inc.	Middletown, CT
Ambler Organizational Consultants, Inc.	Cherry Hill, NJ
Amerace Corporation	Hackettstown, NJ
Amerex Corporation	Trussville, AL
American Association of Exporters & Importers	New York, NY
American Association of Meat Processors	Elizabethtown, PA
American Business Conference	Washington, DC
American Cast Metals Association	Des Plaines, IL
American Council of Independent Laboratories	Washington, DC
American Cyanamid Company	Wayne, NJ
American Electronics Association	Washington, DC
American Express Company	New York, NY
American Farm Bureau Federation	Washington, DC
American Federation of Small Business	Chicago, IL
American Frozen Food Institute	McLean, VA
American Furniture Manufacturers Association	Washington, DC
American Gas Association	Arlington, VA
American Home Products Corporation	New York, NY
American Hotel and Motel Association	Washington, DC
American Institute of Architects	Washington, DC
American Institute of Marine Underwriters	New York, NY

American Institute of Small Business	Minneapolis, MN
American Meat Institute	Rosslyn, VA
American Newspaper Publishers Association	Washington, DC
American Paper Institute	New York, NY
American Retail Federation	Washington, DC
American Street Corridor Business Association	Philadelphia, PA
American Textile Export Company	Gastonia, NC
American Trucking Association	Alexandria, VA
Americas Society	New York, NY
Amigo Sales, Inc.	Bridgeport, MI
Amoco Corporation	Chicago, IL
Andersons	Maumee, OH
Archer Daniels Midland	Decatur, IL
Armtek Corporation	New Haven, CT
Arthur Andersen & Company	Chicago, IL
Arthur Young	New York NY
Artmor Plastics Corporation	Cumberland, MD
Associated Builders & Contractors	Washington, DC
Associated Industries of Kentucky	Louisville, KY
Associated Lumber Industries, Inc.	Carbondale, IL
Association of Collegiate Entrepreneurs	Wichita, KS
Association of Home Appliance Manufacturers	Alexandria, VA
Atlantic Council Canada Group	Washington, DC
Augat, Inc.	Mansfield, MA
Austad's	Sioux Falls, SD
Avon Products, Inc.	New York, NY
B.F. Goodrich Company	Akron, OH
BP America, Inc.	Cleveland, OH
Babcock & Wilcox Company	New Orleans, LA
Baker Service Tools	Houston, TX
Baldor Electric Company	Fort Smith, AR
Ball Corporation	Muncie, IN
Ball Publishing Company	Arcanum, OH
Ballert International	Northbrook, IL
Bank of America	San Francisco, CA
Barnes Group, Inc.	Bristol, CT
Barrett Trailers, Inc.	Oklahoma City, OK
Barrios Technology, Inc.	Houston, TX
Barrister Information Systems Corporation	Buffalo, NY
Bearings, Inc.	Cleveland, OH
Beckman Instruments, Inc.	Fullerton, CA
Bemis Manufacturing Company	Sheboygan Falls, WI
Bend Photo Center, Inc.	Bend, OR
Bernard R. Horn Company	Folcroft, PA
Better Business Bureau of Maricopa County	Mesa, AZ
Black & Decker Corporation	Towson, MD
Blair Cartage, Inc.	Newbury, OH
Blatt's Bakery	Put-in-Bay, OH
Boeing Company	Seattle, WA
Boise Cascade Corporation	Boise, ID
Bowes Manufacturing, Inc.	Solon, OH
Bristol-Myers Company	New York, NY
Brodart Company	Williamsport, PA
Brooklyn Union Gas Company	Brooklyn, NY

Brown Capital Management, Inc.	Baltimore, MD
Brown Deer Bank	Brown Deer, WI
Brown-Forman Corporation	Louisville, KY
Buffalo Forge Company	Buffalo, NY
Buffalo News	Buffalo, NY
Business Roundtable	Washington,DC
Byers Photo Equipment Company	Portland, OR
CAN-AM Business Council of the Greater Buffalo Chamber of Commerce	Buffalo, NY
CF Industries	Long Grove, IL
CPC International, Inc.	Englewood Cliffs,NJ
Calvert Gallery	Washington, DC
Carbis Walker & Associates	Butler, PA
Cargill, Incorporated	Minneapolis, MN
Carlton Group	Richmond, VA
Carolina Freight Carriers Corporation	Cherryville, NC
Cass County Abstract Company	Fargo, ND
Castite Systems, Inc.	Cleveland, OH
Caterpillar, Inc.	Peoria, IL
Champion International Corporation	Stamford, CT
Chardon Rubber Company	Chardon, OH
Charles Beck Machine Corporation	King of Prussia, PA
Charles F. McAfee Architects Engineer Planners	Wichita, KS
Charter Medical Corporation	Macon, GA
Chattahoochee Business Group	Marietta, GA
Chicago Barter Corporation	Lombard, IL
Chicone Groves	Orlando, FL
Christy's	Ellwood City, PA
Chrysler Corporation	Highland Park, MI
Citibank-Arizona	Phoenix, AZ
Citicorp	New York, NY
Citizens for a Sound Economy	Washington, DC
Citizens for the U.S.-Canada Free Trade Pact	Washington, DC
Clairson International Corporation	Ocala, FL
Clark Seals, Ltd.	Tulsa, OK
Claseman Management Services	St. Paul, MN
Climatic Control Company, Inc.	Milwaukee, WI
Coalition of Service Industries, Inc.	Washington, DC
Coca Cola Company	Atlanta, GA
Colborn's	Billings, MT
Coleco Industries, Inc.	West Hartford, CT
Collectors Guild Ltd.	Wilmington, NC
Columbia Chocolates By Mordens	Astoria, OR
Comdisco, Inc.	Rosemont, IL
Commercial Design Consultants	Milwaukee, WI
Committee for Small Business Exports	Aspen, CO
CUC International, Inc.	Stamford, CT
Competition Cams, Inc.	Memphis, TN
Competitive Enterprise Institute	Washington, DC
Comptek Research, Inc.	Buffalo, NY
Computer & Business Equipment Manufacturers Association	Washington, DC
Computer & Communications Industry Association	Washington, DC
Conco Systems, Inc.	Verona, PA

Concord Engineering, Inc.	Richmond, CA
Concord, Inc.	Fargo, ND
Consolidated Freightways, Inc.	Menlo Park, CA
Contact Systems Corporation	New York, NY
Control Data Corporation	Minneapolis, MN
Cooper Industries, Inc.	Houston, TX
Coopers & Lybrand	New York, NY
Copyright Clearance Center	Salem, MA
Creative Management Concepts	Reading, PA
Curtin Insurance Agency, Inc.	Cambridge, MA
Curtis Circulation Company	Hackensack, NJ
Custom Engineering, Inc.	Englewood, CO
D.A. MacPherson, Inc.	Iron River, MI
D&M Consulting & Brokerage, Inc.	Marshfield, WI
D-M-E Company	Madison Heights, MI
Dawg Luvers & Company	Jesup, GA
Deering Lumber, Inc.	Biddeford, ME
Design & Manufacturing Corporation	Connersville, IN
Digital Magnetics	Scottsdale, AZ
Di-Rec Services	Dallas, TX
Distilled Spirits Council of the U.S., Inc	Washington, DC
Dollar Power Discount Store	San Francisco, CA
Dolphin Photo Center, Inc.	Bend, OR
Donaldson Company, Inc.	Minneapolis, MN
Dow Chemical, U.S.A.	Midland, MI
Dow Corning Corporation	Midland, MI
Dunkin' Donuts Incorporated	Randolph, MA
E. I. du Pont de Nemours & Company	Wilmington, DE
E. J. Kearney & Company	Portland, ME
E. R. Clarke Associates, Inc.	Lake Forest, IL
Eastern Building Material Dealers Assoc.	Media, PA
Eastman Kodak Company	Rochester, NY
ERA Steel Construction Corp.	White Plains, NY
Echlin Corp.	Branford, CT
Eclipse, Inc.	Rockford, IL
Econocorp, Inc.	Randolph, MA
Elbert Bradshaw Enterprises	Carmel, IN
Electro Rent Corporation	Santa Monica, CA
Ellett Brothers	Chapin, SC
Emergency Committee for American Trade	Washington, DC
Enerco Technical Products, Inc.	Cleveland, OH
Equitable Financial Companies	New York, NY
Ernst & Whinney	New York, NY
Esselte Business Systems, Inc.	Garden City, NY
Event Specialists, Inc.	Anchorage, AK
Executive Report	Pittsburgh, PA
Exxon Corporation	New York, NY
FMC Corporation	Chicago, IL
Fairchild Industries	Chantilly, VA
Fila Associates	Miami, FL
Firestone Tire & Rubber Company	Akron, OH
First Bank System	Minneapolis, MN
First Boston Corporation	New York, NY
Flambeau Corporation	Baraboo, WI

Fleetwood Enterprises, Inc.	Riverside,CA
Flint Industrial Services	Albany, GA
Focus Electronics, Inc.	Brooklyn, NY
Ford Motor Company	Dearborn, MI
Fort Howard Paper Company	Green Bay, WI
Fraser Paper, Limited	Madawaska, ME
Fred Jones Manufacturing Company	Oklahoma City, OK
Free Press Media Group	Hendersonville, TN
Fuqua Industries, Inc.	Atlanta, GA
Fur Vault, Inc.	New York, NY
G.D. Searle & Company	Chicago, IL
Garrett Corporation	Torrance, CA
Gatherings South, Inc.	Greenville, SC
Gene Boyer & Associates, Inc.	Beaver Dam, WI
Genentech, Inc.	S. San Francisco,CA
General Dynamics Corporation	St. Louis, MO
General Electric Company	Fairfield, CT
General Motors Corporation	Detroit, MI
General Public Utilities Corporation	Parsippany, NJ
Georgia-Pacific Corporation	Atlanta, GA
Gerber Industries, Inc.	St. Peters, MO
Glowacki Everhardt & Association, Inc.	Toledo, OH
Goldman Sachs	New York, NY
Goodyear Tire & Rubber Company	Akron, OH
Gorman-Rupp Company	Mansfield, OH
Grand Trunk Western	Detroit, MI
Greater Newark Chamber of Commerce	Newark, NJ
Gregory Manufacturing Co., Inc.	Jackson, MS
Griffin Agency	Prospect, PA
Griffith Polymers, Inc.	Hillsboro, OR
Grit Publishing Company	Williamsport, PA
Grumman Corporation	Bethpage, NY
H. Carlton Fuller, Inc.	Parish, NY
HMA International Business Development, Ltd.	Greensboro, NC
Half Price Books, Inc.	Dallas, TX
Hamilton Beach, Inc.	Waterbury, CT
Harodite Finishing Co., Inc.	North Dighton, MA
Hartz Mountain Corporation	Harrison, NJ
Heat - Timer Corporation	Fairfield, NJ
Helene Curtis Industries	Chicago, IL
Hercules, Inc.	Wilmington, DE
Hercules Engines, Inc.	Canton, OH
Herrmidifier Company, Inc.	Lancaster, PA
Hevi-Haul International Limited	Butler, WI
Hexagon Architecture Group Limited	Wyncote, PA
High-Tech International	Beltsville, MD
Hill & Associates	Madison, WI
Hoffman Air & Filtration Systems	East Syracuse, NY
Holiday Corporation	Memphis, TN
Holloman Child Development Centers	Hampton, VA
Honda North America	Torrance, CA
Honeywell, Inc.	Minneapolis, MN
Hoover Company	North Canton, OH
Horizon Resources Corporation	York, PA

Hotwatt, Inc.	Danvers, MA
Hunt Tractor, Inc.	Louisville, KY
ITT Corporation	New York, NY
ITBR, Inc.	Austin, TX
Illinois Lumber & Material Dealers Assoc.	Springfield, IL
Illinois Small Businessmen's Assoc.	Chicago, IL
Image Express	Southfield, MI
Imperial Schrade Corporation	New York, NY
Impressive Advance & Litho, Inc.	Waynesboro, VA
Incom International, Inc.	Pittsburgh, PA
Independent Bakers Association	Washington, DC
Industrial Commission of Arizona	Mesa, AZ
Industrial Heating Equipment Association	Arlington, VA
Informerific/Hexter & Associates	Cleveland, OH
Ingersoll-Rand Company	Woodcliff Lake, NJ
Intel Corporation	Santa Clara, CA
International Business Aviation Council, Ltd.	Washington, DC
International Business Machines Corp.	Armonk, NY
International Data Corporation	McLean, VA
International Franchise Association	Washington, DC
Interstate Electronics Corporation	Anaheim, CA
Interstate Natural Gas Assoc. of America	Washington, DC
JGP Marketing Group International, Inc.	Livonia, MI
JLG Industries, Inc.	McConnellsburg, PA
Jack O'Connor's Quality Beef 'N Seafood	Bridgewater, NJ
Johnson & Higgins	New York, NY
Johnson & Johnson	New Brunswick, NJ
Jon Holtshopple & Associates	Madison, WI
Judith E. Meador	St. Louis, MO
Justin Boot Company	Fort Worth, TX
Katy Industries, Inc.	Elgin, IL
Kentucky Manufacturing Company	Louisville, KY
Kentucky World Trade Center	Lexington, KY
Kerr-Hays Company	Ligonier, PA
Kimball Physics, Inc.	Wilton, NH
Kingsbury Machine Tool Corporation	Keene, NH
Knape & Vogt Manufacturing Company	Grand Rapids, MI
Knoll International Holdings, Inc.	New York, NY
Koch Industries	Wichita, KS
Koester Corporation	Defiance, OH
Kraft, Inc.	Glenview, IL
Krughoff Company	Naperville, IL
L.R. Nelson Corporation	Peoria, IL
LC Technologies, Inc.	Fairfax, VA
Lafarge Corporation	Reston, VA
Lamanite Enterprises Corporation	Clearfield, UT
Lancaster Laboratories, Inc.	Lancaster, PA
Laramy Products Company	Lyndonville, VT
Lavelle Aircraft Company	Philadelphia, PA
Lear Jet Corporation	Wichita, KS
Lee, Theisen & Stegall	Phoenix, AZ
Lennox Industries, Inc.	Dallas, TX
Lewis Ranches	Portland, OR
Lin-Art, Ltd.	Arlington Heights, IL

Litton Industries	Woodland Hills, CA
Longyear Company	Minneapolis, MN
Louisiana Association of Business and Industry	Baton Rouge, LA
Louisiana Retailers Association	Baton Rouge, LA
Louisville Plate Glass Company	Louisville, KY
Lowe's Companies, Inc.	North Wilkesboro, NC
Lumbermen Associates, Inc.	Philadelphia, PA
M. Brown & Sons, Inc.	Bremen, IN
M. S. Hansson, Inc.	Boulder, CO
MDB, Inc.	Pittsburgh, PA
Mack Trucks Inc.	Allentown, PA
Macmillan, Inc.	New York, NY
Maidenform, Inc.	New York, NY
Maine Machine Products Company	South Paris, ME
Maine Wild Blueberry Company	Machias, ME
Manufactured Buildings Components, Corp.	East Lansing, MI
Manufacturers Hanover Trust Co.	New York, NY
Marco Wood Products	Walled Lake, MI
Margaret Coleman Associates	Hinsdale, IL
Markets Abroad, Inc.	Miami, FL
Marriott Corporation	Washington, DC
Marsh & McLennan, Inc.	New York, NY
Marshall & Associates	Topsfield, MA
Mary Kay Cosmetics	Dallas, TX
Mattel, Inc.	Hawthorne, CA
Mayflower Transit, Inc.	Indianapolis, IN
Maytag Corporation	Newton, IA
McIntosh, Inc.	Norfolk, NE
McLaurin Parking Company	Raleigh, NC
McMinnville City Sanitary Service, Inc.	McMinnville, OR
Measurex Corporation	Cupertino, CA
Mel Boldt & Association	Mt. Prospect, IL
Mentholatum Company	Buffalo, NY
Merck & Co., Inc.	Rahway, NJ
Meredith/Burda Corporation	Casa Grande, AZ
Metal Treating Institute	Jacksonville Beach, FL
Metropolitan Life Insurance Company	New York, NY
Mid-Continent Cold Storage Company	Omaha, NE
Milbar Corporation	Chagrin Falls, OH
Miller Picking Corporation	Johnsontown, PA
Minnesota Mining & Manufacturing Company (3M)	St. Paul, MN
Mobil Oil Corporation	New York, NY
MonArk Boat Company	Monticello, AR
Monsanto Company	St. Louis, MO
Morgan Guaranty	New York, NY
Morton Buildings, Inc.	Morton, IL
Mosbacher Energy Company	Houston, TX
Moser Bag & Paper Company	Cleveland, OH
Mosler International	Hamilton, OH
Motor Vehicle Manufacturers Association	Washington, DC
Murphy Oil Corporation	El Dorado, AR
N. J. Chapter - National Association of Women Business Owners	Cherry Hill, NJ
NVRyan	McLean, VA

Nalco Chemical Company	Naperville, IL
National American Wholesale Grocers Association	Falls Church, VA
National Association of Beverage Importers, Inc.	Washington, DC
National Association of Home Builders	Washington, DC
National Association of Manufacturers	Washington, DC
National Association of Photographic Manufacturers	Harrison, NY
National Association of Printing Ink Manufacturers	Harrison, NY
National Association of Purchasing Management	Tempe, AZ
National Association of Women Business Owners	Chicago, IL
National Federation of Independent Business	Washington, DC
National Foreign Trade Council	New York, NY
National Frame Builders Association	Kansas, City, MO
National Grange	Washington, DC
National Gypsum Company	Dallas, TX
National Hispanic Business Association	Chamblee, GA
National Lumber & Building Materials Dealers Association	Washington, DC
National Machine Tool Builders Association	McLean, VA
National Retail Merchants Association	Washington, DC
National Small Business United	Washington, DC
National Starch & Chemical Corporation	Bridgewater, NJ
Nestle Enterprises, Inc.	Solon, OH
New England Council, Inc.	Boston, MA
New England Electric System	Westborough, MA
New Jersey Small Business Unity Council	Little Silver, NJ
Newlyweds Foods, Inc.	Chicago, IL
Nicholson, Inc.	Helena, MT
Nordyne, Inc.	St. Louis, MO
Norstar Bank	Buffalo, NY
North Haven Gardens	Dallas, TX
Northeastern Retail Lumbermen's Association	Rochester, NY
Northern Kentucky Chamber of Commerce	Covington, KY
Northland Corporation	Greenville, MI
Northwest River Supplies, Inc.	Moscow, ID
O'Brien Communications	Del Mar, CA
Oakes & McClelland Company	Greenville, PA
Oakwood Markets, Inc.	Kingsport, TN
Occidental Chemical Corporation	Dallas, TX
Ogilvy & Mather International	New York NY
Oneida Ltd.	Oneida, NY
PC Etcetera	New York, NY
PII Affiliates, Ltd.	Manchester, PA
PLM Companies, Inc.	San Francisco, CA
PMI/Taylor Advertising	Columbus, OH
PPG Industries, Inc.	Pittsburgh, PA
Pacer Systems, Inc.	Billerica, MA
Pacific Interstate Company	Los Angeles, CA
Pacific Northwest International Trade Association	Portland, OR
Panhandle Eastern Corporation	Houston, TX

Paragon Electric Company, Inc.	Two Rivers, WI
Parlette Tire Co., Inc.	Erie, PA
Peat Marwick Main & Company	New York, NY
Pennwalt Corporation	Philadelphia, PA
People to People Associates	Lexington, MA
Pepsi-Cola International	Somers, NY
Perham Egg, Inc.	Perham, MN
Perlis Truckstops	Cordele, GA
Pet Incorporated	St. Louis, MO
Pfizer, Inc.	New York, NY
Pharmaceutical Manufacturers Association	Washington, DC
Philips Industries, Inc.	Dayton, OH
Picken Parts, Inc.	Fresno, CA
Pillsbury Company	Minneapolis, MN
Pima Western, Inc.	Tucson, AZ
Plabell Rubber Products, Inc.	Toledo, OH
Plasco, Inc.	Woburn, MA
Plasma Energy Corporation	Raleigh, NC
Plastic Capacitors, Inc	Chicago, IL
Ply*Gem Industries, Inc.	New York, NY
Polaris Industries, Inc.	Minneapolis, MN
Polaroid Corporation	Cambridge, MA
Powermax, Inc.	Columbus, OH
Pratt & Lambert	Buffalo, NY
Pre-Paid Legal Services	Ada, OK
Precision Twist Drill Company	Crystal Lake, IL
Price Company	San Diego, CA
Principal Financial Group	Des Moines, IA
Prinova Co., Inc.	San Francisco, CA
Printing Industries of America	Arlington, VA
Procter & Gamble	Cincinnati, OH
Product Development Corporation	Little Rock, AR
Professional Planning Associates, Ltd.	Phoenix, AZ
Professional Service Corporation	Green Bay, WI
Professional Wealth Management, Inc.	Asheville, NC
Professional Women in Construction & Allied Industries	White Plains, NY
Progressive Management Enterprises, Ltd.	St. Louis, MO
Pulp & Paper Machinery Manufacturers' Association	Washington, DC
Queen Carpet Corporation	Dalton, GA
Queen City Industries, Inc.	Piqua, OH
Quick, Finan & Associates, Inc.	Washington, DC
Quill Corporation	Lincolnshire, IL
Quillen Group	Groton, CT
R. R. Accessories, Inc.	Boston, MA
R. R. Donnelley & Sons Company	Chicago, IL
RJR Nabisco	Atlanta, GA
Radio KDNO	Delano, CA
Ramada, Inc.	Phoenix, AZ
Raytheon Company	Lexington, MA
Recognition Equipment, Inc.	Dallas, TX
Recon/Optical, Inc.	Barrington, IL
Resources International	Phoenix, AZ

Rexnord, Inc.	Brookfield, WI
Rheem Manufacturing Company	New York, NY
Ridenour & Associates	Chicago, IL
Riordan, Crivello, Carlson & Menthkowski	Milwaukee, WI
Roll-o-Matic, Inc.	Kansas City, MO
Rooney, Plotkin & Willey	Providence, RI
Rorer International Pharmaceuticals	Fort Washington, PA
Rotron Engineering Company, Inc.	Woburn, MA
Rubber Manufacturers Association	Washington, DC
Rudolph Beaver, Inc.	Waltham, MA
Rural Gravuce Services, Inc.	Madison, WI
Russ Berrie and Company, Inc.	Oakland, NJ
S. C. Johnson & Son, Inc.	Racine, WI
SNC Manufacturing Company	Oshkosh, WI
Sabre Yachts	South Casco, ME
Safeway Stores, Inc.	Oakland, CA
Samsonite Corporation	Denver, CO
Sandmeyer Steel Company	Philadelphia, PA
Sargent-Welch Scientific Company	Skokie, IL
Scientific-Atlanta, Inc.	Atlanta, GA
Scott Paper Company	Philadelphia, PA
Sears, Roebuck and Company	Chicago, IL
Shaw Mudge & Company	Stamford, CT
Shell Oil Company	Houston, TX
Sheridan & Fritz, P.C.	Harrisburg, PA
Siliconix, Inc.	Santa Clara, CA
Simplex Time Recorder Company	Gardner, MA
Singer Company	Stamford, CT
Singer, Lewak, Greenbaum & Goldstein	Los Angeles, CA
Smada, Inc.	Phoenix, AZ
Small Business Foundation of America	Boston, MA
Small Business Hawaii, Inc.	Honolulu, HI
Small Business United of Missouri	St. Louis, MO
Smaller Business Associates of New England	Boston, MA
Smaller Manufacturers Council	Pittsburgh, PA
Smith Barney, Harris, Upham & Co., Inc.	New York, NY
Smith Rollinson	Alexandria, VA
Snyder General Corporation	Dallas, TX
Southern Connecticut Gas Company	Bridgeport, CT
Spacesaver Corporation	Fort Atkinson, WI
Specialized Carriers & Rigging Association	Alexandria, VA
Square One, Inc.	Madison, WI
Squibb Corporation	Princeton, NJ
Sta-Rite Overseas Corporation	Milwaukee, WI
Stackpole Corporation	Boston, MA
Standard-Thomson Corporation	Waltham, MA
Steiner Shipyard, Inc.	Bayou La Batre, AL
Steinfeld's Products Company	Portland, OR
Stemco, Inc. Truck Products	Longview, TX
Steve Lakes and Associates	Phoenix, AZ
Stiegler, Inc.	Fargo, ND
Stone & Webster Engineering Corporation	Boston, MA
Storage Technology Corporation	Louisville, CO
Stragalas and Co., Inc.	Phoenix, AZ

Stripling-Blake Building Lumber Co., Inc	Austin, TX
Sun Electric Corporation	Crystal Lake, IL
Superior Country Wood Truss	Germfask, MI
Superior Technical Ceramics Corporation	St. Albans, VT
Syntex Corporation	Palo Alto, CA
T&H Building Supply	Redwood City, CA
TAM Brands, Inc.	Lake Success, NY
TAPJAC Home Centers	Carthage, MO
TRW, Inc.	Cleveland, OH
TVI Creative Specialists	Washington, DC
TWT International	Portland, OR
Tandem Computers Incorporated	Cupertino, CA
Tandy Brands, Inc.	Fort Worth, TX
Tandy Corporation	Fort Worth, TX
Tanner Systems, Inc.	Sauk Rapids, MN
Tatum Enterprises	Honolulu, HI
Technivest, Inc.	South Bend, IN
Ted Grob Sales, Inc.	Grafton, WI
Tenneco Gas Pipeline Group	Houston, TX
Termiflex Corporation	Merrimack, NH
Terry Neese Personnel Services	Oklahoma City, OK
Texas Industries, Inc.	Dallas, TX
Textron, Inc.	Providence, RI
Thomas J. Seitz Co., Inc.	Racine, WI
Tingley Systems, Inc.	San Antonio, FL
Toledo Harbor Warehousing, Inc.	Toledo, OH
Touche-Ross	New York, NY
Tracor, Inc.	Austin, TX
Trail King Industries, Inc.	Mitchell, SD
TransTech, Inc.	East McKeesport, PA
Tri-M Corporation	Kennett Square, PA
Triangle Research Development Corp.	Research Triangle Park, NC
Trinity Industries, Inc.	Dallas, TX
Trouble Shooters, Inc.	Omaha, NE
Truck Trailer Manufacturers Association	Alexandria, VA
Trucking Services, Inc.	Dearborn Heights, MI
Trust T's Investments	Scottsdale, AZ
U.S. Axle, Inc.	Pottstown, PA
U.S. Bearings & Drives of CA, Inc.	Santa Clara, CA
U.S. Chamber of Commerce	Washington, DC
U.S. Council for International Business	Washington, DC
USG Corporation	Chicago, IL
Ultrasystems, Inc.	Irvine, CA
Unilever United States, Inc.	New York, NY
United Fresh Fruit & Vegetable Association	Alexandria, VA
United Illuminating Company	New Haven, CT
United Industries, Inc.	Wichita, KS
Upjohn Company	Kalamazoo, MI
Valley National Bank of Arizona	Phoenix, AZ
Valspar Corporation	Minneapolis, MN
Vanport Manufacturing, Inc.	Boring, OR
Village Green	Midland, MI
Virco Manufacturing Corporation	Torrance, CA

Vocational Rehabilitation Associates, Inc.	Eugene, OR
W.H. Brady Company	Milwaukee, WI
W.R. Grace & Company	New York, NY
WIS, Inc.	Toledo, OH
Wainoco Oil Corporation	Houston, TX
Waldorf Corporation	St. Paul, MN
Warnaco, Inc.	New York, NY
Wayer Corporation	Landover, MD
Wellon's Inc.	Sherwood, OR
Western Publishing Company, Inc.	Racine, WI
Weyerhaeuser Company	Tacoma, WA
Whale Scientific, Inc.	Commerce City, CO
Whirlpool Corporation	Benton Harbor, MI
White Plains Iron, Inc.	New York, NY
Wholesale Florists & Florist Suppliers of America	Arlington, VA
Will-Burt Company	Orrville, OH
William A. Price & Associates	Wheaton, IL
William H. Taylor & Company, Inc.	Allentown, PA
Wingspread Corporation	New York, NY
Women Entrepreneurs	Lincolnwood, IL
Women Featherbone Company	Gainesville, GA
Woodhead Industries, Inc.	Northbrook, IL
World Trade Counselors	Estes Park, CO
Zimpro Passavant, Inc.	Rothschild, WI
ZinYeast, Inc.	Marshfield, WI

Mr. **Pease**. The other one I would like to ask all of you, perhaps especially Mr. Freeman, is about the United States-Canadian exchange rate.

I think you know a little bit about exchange rates, Mr. Freeman, and I have been concerned for quite some time about the relationship of the U.S. dollar to the Canadian dollar. Some people would argue that that relationship gives a significant advantage to Canadian producers.

I have been struck with the fact, which I think is a fact, that over the last several years, the last couple of years, the U.S. dollar has been depreciating materially against the Japanese yen, the German deutsche mark and so. But there has been relatively little movement in relation to the United States and Canadian dollars.

Can you tell me what accounts for that and whether the current exchange rate is within a reasonable range, or is there an implicit subsidy for Canadian products?

Mr. **Freeman**. I think that is generally true that the Canadian exchange rate does not move with the change of, say, the dollar, yen, deutsche mark or dollar British pound. It is more like the Korean won and some of the other countries that have moved generally, at an exchange roughly equivalent with the U.S. dollar.

I am of the school that really believes that central banks can only impact exchange rates at the margin for a while, and I think that if the exchange rate with Canada and the United States, which I think is around 72 or 73 cents, it has been there a while, it is basic economics; I don't think it is Government policy.

I think there are extreme limitations, even if you want to impact the exchange rates, on what governments can do by intervention. They can burn the arbs from time to time on this sort of thing and do so.

I would not assume from the relationship between the United States and Canadian dollar, that it is a U.S. policy over a number of years. It is fundamental economics. I don't know where the Canadian dollar will go from here, either.

Mr. **Lilley**. If I can add to that, in the previous decade you had the reverse situation, where the Canadian dollar substantially depreciated to American dollars, so based on economic fundamentals in the last years of the Trudeau regime.

I think it is a moving situation depending on the macroeconomic situation.

Mr. **Pease**. When was the last time the Canadian dollar was worth more than 80 cents? Do you have any idea?

Mr. **Freeman**. I really don't know. I can find out.

[Mr. Freeman subsequently responded: February 1984.]

Mr. **Pease**. What concerns me in relation to Mr. Lilley's comment just now is, in the early 1980s when the dollar was soaring, appreciating very rapidly against other currencies and didn't move much against the Canadian dollar, now the dollar is plunging and it is still not moving much against the Canadian dollar somehow or other.

I don't know what underlying fundamentals in the Canadian economy have changed that much in the last 10 years that would account for that phenomenon.

Mr. **Freeman**. I can't answer you specifically except to repeat it has to do with economic fundamentals. I don't think a Government of the size of Canada, which has a free exchange rate—it is freely traded currency, it is not a block currency like the ruble or something like that. It is a free market. In the free market, economic forces will prevail over time.

Mr. **Pease**. I agree with you that central banks can't manipulate, for a long period of time, the exchange rate. But it seems awfully strange to me that the Canadian dollar has remained within a narrow range for a period of 10 years when the dollar was going first way up and then way down.

I appreciate your effort.

Mr. **Freeman**. I appreciate the question. I am not sure you are going to get an answer that is satisfactory on that.

Mr. **Pease**. I appreciate your attempt to provide me with an answer, and I will just keep on looking.

Thank you very much.

Chairman **Gibbons**. Before this panel leaves, and because Mr. Pease raised an interesting question here, as you know, Mr. Pease, when we started off last fall we were going to investigate all exchange numbers, and because Congress ran on so long we didn't do it. I began a little investigation myself.

In 1986 the world's trade flows were $2 trillion. But can you guess how much the foreign exchange trade flows were? They were $75 trillion.

So comparing a trade ratio of 2 and a dollar exchange rate of $75 trillion, enormous—in fact, every day in the currency market—we really do have a market in currency—some $425 billion U.S. dollars are exchanged.

Now, you can't rig a market like that. I have been impressed as I travel in Canada, Canadian goods cost about the same as U.S. goods. You just spend more Canadian dollars on them than you are used to in U.S. dollars.

I have also found Canadians also know the exchange rate. If it has got, say, a dollar Canadian on the price tag, they will only collect from you 74 or 84 cents, whatever it is. They just do the exchange automatically.

I bring these out because there is a whole lot we don't understand about trade and money values. We used to think trade set the value of money, but when you look at what 2 is to 75, I don't know who is waging what.

Mr. **Schulze**. How about the price of gold? Could I go up there and buy——

Chairman **Gibbons**. I think gold is completely irrelevant to anything. It is just witchcraft. I don't think it makes any sense in the world market except some people just love gold. It is like cheese on a plate, they just love to have it.

Mr. **Schulze**. I was wondering whether I could make a 25 percent profit. If I could, I would be happy to do that.

Chairman **Gibbons**. They don't do that.

Mr. **Schulze**. That does indicate to me there might be some little imbalance.

Chairman GIBBONS. No, they charge you the same. They just do the conversion of the Canadian dollar to the U.S. dollar. A dollar is not a dollar just because it is called a dollar.

We have Hong Kong dollars, Canadian dollars. How many other kinds of dollars have we got? I don't know.

Mr. PEASE. Mr. Chairman, I spent time in Canada also last year and I was struck with the fact that the prices in Canadian dollars of motel rooms, meals, rental cars, were roughly what you would expect the prices to be in U.S. dollars in the United States, which meant for an American the real cost of those services in Canada was about 75 percent of what they would be in the United States.

Chairman GIBBONS. I want to go to your part of Canada the next time I travel.

Mr. PEASE. You ought to. I went to Banff. It is a lovely place.

It just seems to me there is something odd about that. I don't understand what is so much different about Canada from the United States which results in that differential in our exchange rate.

Mr. SCHULZE. Mr. Chairman, before we leave, may I ask Mr. McKevitt one question?

Chairman GIBBONS. Sure.

Mr. SCHULZE. It seems to me he did mention procurement, and I have a problem with procurement in that Canada will declare—under a GATT legal process—that a product is necessary for national defense in order to preclude other countries from bidding on that product, where in our bidding process the same product would not be declared essential to national defense.

Here is another area which concerns me with symmetrical access. I don't mind them doing that, but I wish our negotiators could work something out. It seems to me it is only fair, especially from a small business standpoint, where they are being precluded or blocked from bidding on a procurement item while the Canadian producers are supplying those same products to our Department of Defense.

I wonder if you have any comments.

Mr. MCKEVITT. I share some of your concerns. Having discussed this with people at Treasury, I think there is some fine tuning which is still needed in that area. But the important facet is they are opening the door to procurement.

Mr. SCHULZE. What would you recommend in this area?

Mr. MCKEVITT. I would rather go back and talk to the experts and get back to you. I would probably give you a curb stone, Mr. Schulze.

Mr. SCHULZE. Do you think we should have equal access?

Mr. MCKEVITT. One of the things about procurement is a lot of people won't look that hard at it, and you have to realize there is big opportunity out there.

Mr. SCHULZE. That is right, and it is an opportunity for the small businessman to get his foot in the door. That is why I am so concerned about it.

Mr. MCKEVITT. You are exactly right. You have dealt with small business for a number of years here in Congress and you know the opportunities available to small business.

In talking with people at Treasury, it is a matter of saying let's look at it more in depth and say where do we stand on it.

Mr. SCHULZE. If you have recommendations, I would like to have them.

Mr. MCKEVITT. Thank you, sir. I will check on it and get back to you.

Chairman GIBBONS. Thank you. We appreciate the panel coming. Our next panel consists of Rudy Oswald, the director of the department of economic research, AFL-CIO. Also, the International Brotherhood of Teamsters, Paul Locigno. And the International Leather Goods, Plastics & Novelty Workers' Union, AFL-CIO, Domenic DiPaola.

We welcome you all back again. We are glad to see you here. Go ahead.

STATEMENT OF RUDOLPH OSWALD, DIRECTOR OF ECONOMIC RESEARCH, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, AFL-CIO

Mr. OSWALD. Mr. Chairman and members of the committee, the AFL-CIO appreciates this opportunity to present its views on the proposed United States-Canada Free Trade Agreement. The federation believes that this agreement, signed by President Reagan and Prime Minister Mulroney on January 2, 1988, will do little to solve the serious trade problems that exist between the United States and Canada, and may in fact make them worse. The AFL-CIO joins the Canadian labor movement in opposing this agreement because we share the view that governments must play a positive role in managing relations between countries and that increased reliance on so-called market forces will not necessarily promote economic growth and equity.

Generally speaking, there is little in the agreement that will benefit American workers. It does not address the huge imbalances in trade in goods between the United States and Canada, nor the large exchange rate differential which has contributed importantly to those imbalances. Its silence on the issue of exchange rates is particularly significant, and raises real questions concerning the validity of the entire exercise.

How can American industry and agriculture hope to compete on a fair and equitable basis when current exchange rates have the effect of conferring a 28 percent cost advantage on Canadian producers? The exchange rate advantage of the Canadians operates much like a tariff on the Canadian side of the ledger, raising the price of U.S. goods by 28 percent. But the exchange rate differential is worse than a tariff on the export of Canadian goods to the United States It cheapens their goods by 28 percent in the U.S. market, giving them a substantial advantage over U.S. goods.

Mr. Chairman, you and Mr. Pease commented about the exchange rate. We have negotiated with the Germans and the Japanese to lower exchange rates, and we believe that that needs to be part and parcel of any agreement that deals with trade.

The tragic experience of the United States over the last 8 years demonstrates the importance of exchange rates in international trade and the failure of the agreement to address this factor is alone sufficient grounds for congressional disapproval.

The agreement is based upon the assumption that free trade between the countries will help lead the United States toward a general trade equilibrium, helping the United States in eliminating its huge trade deficits. In 1987, the United States suffered a $171 billion trade deficit, worldwide, and a $12 billion trade deficit with Canada, under one reckoning, and $18 billion under another reckoning, thus accounting for 7 or 11 percent of the U.S. trade deficit. Nothing in this agreement assures that this persistent imbalance in trade between the United States and Canada will improve.

The agreement itself, while moving in the direction of "market" determined trade, does not by any measure establish free trade. Significant inequities in trade practices remain, even after the 10-year transition period. What has been negotiated is not a free-trade agreement, but a new bilateral trade arrangement, and Congress should judge the proposal on the basis of fairness, reciprocity and national interest. Regrettably, the agreement falls far short of meeting these goals. A whole series of Canadian practices that discriminate against U.S. production have been grandfathered. By prohibiting the introduction of new measures to regulate or manage trade, Canadian advantage has been solidified.

It appears that the tradeoff for the continuation of discriminatory Canadian practices is greater access for U.S. investment and services. Even here, however, reciprocal treatment has not been achieved, and the United States has forfeited the right to employ measures that may prove necessary in the future. The AFL-CIO has long been concerned over the priority given to negotiations on investment and trade in services. The principal trade problem facing the United States is undeniably the massive trade deficits occurring in the manufacturing sector and the resultant loss of employment. Emphasis on liberalizing trade in services and investment flows will have little impact on this central issue, and may in fact contribute to the deterioration of the domestic manufacturing sector if discriminatory practices of other countries in the goods area are left intact as the price for reductions in barriers to services and investment. This problem is regrettably demonstrated by the telecommunications section of the agreement. While the United States has gained greater access for telecommunications services, Canadian procurement policies that discriminate against telecommunication goods produced in the United States remain in place. Further, what may appear to some as barriers to service trade on international investment are in fact proper and even essential social and economic policies in both the United States and foreign economies. While unrestricted flows of services and investment may be important to certain corporate interests, this does not make them significant for the economy as a whole.

The AFL-CIO is also concerned that this proposed agreement will be used as a blueprint for bilateral negotiations with other countries as well as the Uruguay round of negotiations under the General Agreement on Tariffs and Trade (GATT). Recent pronouncements by President Reagan and Vice President Bush concerning a free-trade agreement with Mexico have served to underscore that worry. The United States can ill afford to continue to ignore the damage done by one-sided trade to the domestic manufacturing sector.

Mr. Chairman, last Friday the AFL–CIO Executive Council in a statement adopted February 19, 1988, outlined objections to a number of specific provisions of the agreement, including the following.

The separate procedures established for Canada regarding trade remedy law are not only unwise in and of themselves but establish an extremely bad precedent for negotiations with other countries. It also was concerned that the Canadian tariff advantage would continue for 10 years.

Another element was that additional Federal Government procurement would be open to Canadian bidding whereas most Canadian business or governmental activities are provincial rather than Federal.

The agreement would also permit continued Canadian protection of a variety of industries. Also, concern was expressed over the reduction of U.S. energy independence by permitting the export of 50,000 barrels per day of Alaska oil. And it would prohibit controls on the import or export of electric power, where there have been some problems in the past.

The agreement also would weaken, in our view, U.S. emigration. It would retain favorable treatment for Canada. I would permit Canadian advantage for certain agricultural commodities and it would provide a disadvantage for certain U.S. mineral industries.

On this basis, the Executive Council, the AFL–CIO called upon Congress to reject the United States-Canadian Free Trade Agreement, and we ask Congress and this committee to do so.

Thank you, Mr. Chairman.

[The statement of Mr. Oswald follows:]

88-05

STATEMENT OF Dr. RUDOLPH OSWALD, DIRECTOR OF ECONOMIC RESEARCH
AMERICAN FEDERATION OF LABOR AND CONGRESS
OF INDUSTRIAL ORGANIZATIONS
ON THE U.S.-CANADA FREE TRADE AGREEMENT,
BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

FEBRUARY 26, 1988

Mr. Chairman, members of the committee, the AFL-CIO appreciates this opportunity to present its views on the proposed U.S.-Canada Free Trade Agreement. The Federation believes that this agreement, signed by President Reagan and Prime Minister Mulroney on January 2, 1988, will do little to solve the serious trade problems that exist between the U.S. and Canada, and may in fact make them worse. The AFL-CIO joins the Canadian labor movement in opposing this agreement because we share the view that governments must play a positive role in managing relations between countries and that increased reliance on so-called "market forces" will not necessarily promote economic growth and equity.

Generally speaking, there is little in the agreement that will benefit American workers. It does not address the huge imbalances in trade in goods between the U.S. and Canada, nor the large exchange rate differential which has contributed importantly to those imbalances. It's silence on the issue of exchange rates is particularly significant, and raises real questions concerning the validity of the entire exercise. How can American industry and agriculture hope to compete on a fair and equitable basis when current exchange rates have the effect of conferring a 28% cost advantage on Canadian producers? The exchange rate advantage of the Canadians operates much like a tariff on the Canadian side of the ledger, raising the price of U.S. goods by 28%. But the exchange rate differential is worse than a tariff on the export of Canadian goods to the U.S. It cheapens their goods by 28% in the U.S. market, giving them a substantial advantage over U.S. goods. The tragic experience of the U.S. over the last eight years has amply demonstrated the importance of exchange rates in international trade, and the failure of the agreement to address this factor is, alone, sufficient grounds for Congressional disapproval.

The agreement is based upon the assumption that "free trade" between the countries will help lead the U.S. towards a general trade equilibrium, helping the U.S. in eliminating its huge trade deficits. In 1987, the U.S. suffered a $171 billion trade deficit, worldwide, and a $12 billion trade deficit with Canada, under one reckoning and $18 billion under another reckoning - thus accounting for 7% or 11% of the U.S. trade deficit. Nothing in this agreement assures that this persistent imbalance in trade between the U.S. and Canada will improve.

The agreement itself, while moving in the direction of "market" determined trade does not by any measure establish free trade. Significant inequities in trade practices will remain, even after the ten year transition period. What has been negotiated, is not a free trade agreement, but a new bilateral trade arrangement, and Congress should judge the proposal on the basis of fairness, reciprocity, and national interest. Regrettably, the agreement falls far short of meeting these goals. A whole series of Canadian practices that discriminate against U.S. production have been grandfathered. By prohibiting the introduction of new measures to regulate or manage trade, Canadian advantage has been solidified.

It appears, that the trade-off for the continuation of discriminatory Canadian practices is greater access for U.S. investment and services. Even here, however, reciprocal treatment has not been achieved, and the U.S. has forfeited the right to employ measures that may prove necessary in the future. The AFL-CIO has long been concerned over the priority given to negotiations on investment and trade in services. The principal trade problem facing the U.S. is undeniably the massive trade deficits occurring in the manufacturing sector and the resultant loss of employment. Emphasis on "liberalizing" trade in services and investment flows will have little impact on this central issue, and may in fact contribute to the deterioration of the domestic manufacturing sector if discriminatory practices of other countries in the goods area are left intact as the price for reductions in barriers to services and investment. This problem is regrettably demonstrated by the telecommunications section of the agreement. While the U.S. has gained greater access for telecommunications services, Canadian procurement policies that discriminate against telecommunication goods produced in the U.S. remain in place. Further, what may appear to some as "barriers" to service trade on international investment are in fact proper and even essential social and economic policies in both the U.S. and foreign economies. While unrestricted flows of services and investment may be important to certain corporate interests, this does not make them significant for the economy as a whole.

The AFL-CIO is also concerned that this proposed agreement will be used as a blueprint for bilateral negotiations with other countries as well as the Uruguay Round of negotiations under the General Agreement on Tariffs and Trade (GATT). Recent pronouncements by President Reagan and Vice President Bush concerning a free trade agreement with Mexico have served to underscore that worry. The U.S. can ill afford to continue to ignore the damage done by one sided trade to the domestic manufacturing sector.

The AFL-CIO Executive Council in a statement adopted February 19, 1988 (Attachment) outlined objections to a number of specific provisions of the agreement including the following:

* The separate procedures established for Canada regarding trade remedy law are not only unwise in and of themselves, but establish an extremely bad precedent for negotiations with other countries. These provisions have the potential of limiting the ability of the U.S. to take action under the countervailing duty and antidumping statutes, as well as Sec. 301 and the escape clause. Not only is there little assurance that Canadian subsidies (many of which are provincial) will end, but many discriminatory Canadian practices have been essentially endorsed.

* The existing inequities between the U.S. and Canadian implementation of the 1965 Auto Pact are retained, while the growing use of imported parts is not sufficiently discouraged. The production and Canadian value-added requirements imposed on Canadian auto producers are continued, while the U.S. has no similar safeguards. The North American value required for duty-free entry into the U.S. is too low to prevent erosion in the North American content of vehicles produced by U.S. companies, and would not significantly increase the North American value of vehicles assembled by foreign-owned "transplant" operations.

* Tariff rate advantages and duty remission programs will not be eliminated for up to ten years thereby encouraging Canadian production and discouraging U.S. exports. The U.S. has agreed to phase out the recently enacted customs-user fee for Canada, which only amounts to .17%.

* Additional U.S. Federal government procurement is opened for Canadian bidding with a value six times greater than the amount allowed for U.S. producers. The U.S. needs to strengthen, not weaken, buy American laws and regulations.

* U.S. energy independence is weakened by permitting the export of 50,000 barrels per day of Alaskan oil and setting an unfortunate precedent for additional exports; prohibiting controls on the import or export of electrical power; and eliminating import controls on enriched uranium.

* U.S. immigration law is weakened by substantially easing the ability of "business and professional" persons to temporarily enter the U.S. For those covered, the agreement eliminates prior approval procedures, petitions, or labor certification tests.

* A wide range of Canadian industries and agricultural commodities would continue to receive protection, or favorable differential treatment. They include autos, telecommunications, wine and beer, grain, poultry and eggs, fish, plywood, and so-called cultural industries.

The AFL-CIO believes that this agreement is totally inadequate to the task of solving the trade problems that exist between the U.S. and Canada. The agreement does not promote U.S. employment and production which would reduce the large U.S. trade deficit with Canada. At the very least, America should demand reciprocal treatment in trade. This agreement falls far short of even that modest goal, and should be rejected by Congress.

Attachment

ATTACHMENT

Statement by the AFL-CIO Executive Council

on

U.S.-Canada Free Trade Agreement

February 19, 1988
Bal Harbour, FL

The U.S.-Canada Free Trade Agreement signed on January 2, 1988, and awaiting Congressional consideration, will do little to solve the serious trade problems between the U.S. and Canada and may in fact make them worse. The AFL-CIO joins our brothers and sisters in the Canadian labor movement in opposing this agreement. We share the view that governments must play a positive role in managing relations between countries and reject the notion that "market forces" alone will promote economic growth and equity.

Specifically, the agreement does not address:

* The huge U.S. imbalances in trade of goods with Canada;
* the large exchange rate differential.

While moving in the direction of "market" determined trade, the agreement does not, by any measure, establish free trade. Significant inequities in trade practices will remain, even after the ten-year transition period.

The AFL-CIO particularly objects to provisions in the agreement that would:

* Establish separate procedures for U.S.-Canada trade;
* Maintain Canadian tariff advantages for ten years;
* Open additional federal government procurement to Canadian bidding;
* Permit continued Canadian protection of a variety of industries;
* Reduce U.S. energy independence by permitting the export of 50,000 barrels per day of Alaskan oil and prohibit controls on the import or export of electrical power;
* Weaken U.S. immigration law.
* Retain favorable treatment in auto trade for Canada;
* Permit Canadian advantage for certain agricultural commodities.
* Disadvantage certain U.S. mineral industries.

The AFL-CIO calls upon Congress to reject the U.S.-Canada Free Trade Agreement.

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Chairman GIBBONS. Now the Brotherhood of Teamsters.

STATEMENT OF PAUL R. LOCIGNO, DIRECTOR OF GOVERNMENTAL AFFAIRS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Mr. LOCIGNO. Thank you, Mr. Chairman.

On behalf of our nearly 1.7 million members representing over 43,000 collective-bargaining agreements and having the honor of representing both working men and women in the United States and Canada, our affiliates in Canada strongly oppose this agreement, and the U.S. membership equally opposes such.

Mr. Chairman, in frankness and fairness, I think an agreement that arouses the working people of both countries says something about the merits and the effects it will have on the working people and their families. The Teamsters concur with Dr. Oswald's statement here today and the AFL–CIO Executive Board resolution, and I would like to expand on some parochial concerns and specific problems that the Teamsters Union has in addition to labor in general.

This proposed pact seeks to eliminate both countries' tariffs through staggered reductions over a 10-year period. This is a noble effort, but the results are unfair, as the Canadians are allowed to keep their tariff advantages for another 10 years.

There are a multitude of American industries that have already suffered at the hands of this unfairness, and will certainly suffer for another decade if this agreement is approved.

For example, the vinyl floor covering industry is one area where the Teamsters' members have a serious disadvantage. Currently Canada imposes a 13.7 percent tariff and an 8 percent Federal sales tax on all U.S.-made vinyl floor coverings sold in their country. The United States imposes only a 5.7 duty on similar Canadian-made floor coverings sold here. It is no wonder that the Canadian vinyl floor covering business has increased threefold since 1982 at the expense of hundreds of U.S. jobs.

A second area of concern we have is what the agreement doesn't say—what has been left out. The Teamsters Union had attempted to work closely during the last year with the U.S. Trade Representative Office and the U.S. Department of Labor in an attempt to formulate a solution that could be added to the pact to address the current unfairness that exists between the U.S. and Canada in the trucking industry.

Currently Canada's restrictions on trans-border trucking severely limit the ability of U.S. companies to compete in the country while Canadian companies have been able to operate with relative freedom in the United States since U.S. trucking deregulation was approved in 1980.

A third major area of concern to a number of industries centers around what the free trade agreement also leaves untouched. We are concerned over the agreement's failure to address the problem of unfair Canadian subsidies. There is no single area which has been more disruptive to our trade relations with Canada over the last few years than the extensive and pervasive Canadian Federal and provincial system of subsidies.

The agreement gives Canadian firms a competitive edge over the competitors not only in the United States but around the world. This system which promotes the fundamental unfairness in our trade with Canada can't be left unaddressed, and yet the free-trade agreement does not require or even speak to removal of these guidelines.

Another disruptive area is the settlement procedures relating to the antidumping and counterveiling duty laws that put many U.S. industries at a more serious disadvantage vis-a-vis its Canadian competitor when a U.S. industry petitions for redress under those laws. The agreement recently negotiated eliminates American manufacturers' right to appeal the decisions of Commerce in international trade courts.

Another area I talked about in my testimony that I won't get into is our concern over the bipartisan panel that has been created in this agreement and we believe it is an encroachment on Congress and we believe it will have disastrous effects.

Mr. Chairman, I would like to close and state that not only the Teamsters but I believe the entire labor movement strongly supports the Gephardt amendment because our negotiators consistently have not done a good job at the negotiating table. We certainly believe that this is the case in this current agreement.

I think if anyone wants to make a sincere effort, this agreement should not be on the fast track; it should not be touted because the administration thinks it is needed for the current government in Canada, because it is a conservative ally. I think it is sad that this has been done because this is not fair and free trade.

We hope the Congress will consider sending our negotiators back to the bargaining table.

Thank you.

Chairman GIBBONS. Thank you, sir.

[The statement of Mr. Locigno follows:]

STATEMENT OF PAUL R. LOCIGNO, DIRECTOR OF GOVERNMENTAL AFFAIRS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Mr. Chairman and members of the Subcommittee, I am the International Brotherhood of Teamsters' Director of Governmental Affairs. We are pleased to have this opportunity to present our views on the US-Canada Free Trade Agreement. This agreement promises to have a large and lasting negative effect on our members and their families, as well as all working Americans. If nothing else, the last few years have taught us that our trade policy is a critical element of this country's economic well-being, including our ability to be competitive as a nation and to retain and create well-paying jobs. I currently serve as a member of the President's Export Council, a body designed to formulate and advise the President on export matters. I am also a member of the US Department of Labor's Advisory Committee for Trade Negotiations and Trade Policy. I have seen first hand, as you have, the effects that a flawed trade policy can have on our economy.

The International Brotherhood of Teamsters, with over 1.7 million members in almost every job classification, has the privileged distinction to represent working men and women not only in the United States, but in Canada as well. Our affiliates in Canada strongly oppose this agreement. The US Teamster membership is also strongly opposed. Mr. Chairman, in all fairness, I think an agreement that arouses opposition of the working people in both countries says something about its merits and its potential effects.

The Teamsters Union wholly concurs with the AFL-CIO's statement today, as articulately presented by Rudy Oswald. After careful consideration and analysis, the AFL-CIO Executive Council has been forceful in leading the opposition to this pact. We would like to expand on a few points.

I think it is fair to say that we all want a solution to the serious trade difficulties that have developed between the US and Canada. Despite our friendship and similarities, our two countries are deeply at odds, and increasingly so, over trade. Unfortunately, we do not feel this agreement as currently written will bring our problems any closer to solution. Indeed, we believe precisely the opposite is the case: This agreement will institutionalize in treaty form some of the most fundamental elements of unfair trade.

First, this proposed pact seeks to eliminate both countries' tariffs through staged reductions over a ten-year period. A noble effort, but the result is simply unfair as the Canadians are allowed to keep their tariff advantages for another ten years. There are a multitude of American industries that have already suffered at the hands of this unfairness, and will certainly suffer for another decade if this agreement is approved. The vinyl floorcovering industry, for example, is one area where Teamster members have been seriously disadvantaged. Currently, Canada imposes a 13.7% tariff and an 8% federal sales tax on all US-made vinyl floorcoverings sold in their country. The US imposes only a 5.7% duty on Canadian-made floorcoverings sold here. It is no wonder that the Canadian vinyl floorcovering busfness has increased threefold in this country since 1982, and why hundreds of US jobs in this industry have been lost. The Teamsters represent workers at Tarkett, Inc., a US manufacturer. We have tried to assist them with this problem. Unfortunately, the current tariff structure continues to steal more and more of their market share. What are we to tell these employers? "Hold on until 1999?" Many simply won't make it. Mr. Chairman, it would seem more sensible and fair to require an equalization of the tariffs immediately, and then a parallel-staged reduction period. US industries cannot afford to extend the unfairness of the current tariff structure for ten more years. Moreover, the inequities in many industries will continue to the disadvantage of the United States even after the ten-year staging periods are completed.

Our second major problem with this agreement concerns not what is in it, but rather what has been left out. The Teamsters Union worked closely last year with the US Trade Representatives Office and the US Department of Labor in attempting to formulate a solution that could be added to the pact that would address the current unfairness that exists between the US and Canada in the trucking industry. Currently, Canada's restrictions on trans-border trucking severely limit the ability of US companies to compete in that country while Canadian companies have been able to operate with relative freedom in the United States since US trucking deregulation was approved in 1980.

Unfortunately, this area is another where US negotiators were outdone by their Canadian counterparts. The rationale for the omission of the trucking industry is the promise of Canadian trucking deregulation. However, the large provencial discretion in this area and what promises to be a long phase-in will certainly keep the US at a disadvantage for many years to come.

A third major area of concern not only to the Teamsters, but to a number of industries throughout the country also centers around what the Free Trade Agreement leaves untouched. We are concerned over the agreement's failure to address the problem of unfair Canadian subsidies. There is no single area which has been more disruptive and devisive to our trade relations with Canada over the last few years than the extensive and pervasive Canadian Federal and Provincial system of subsidies. This arrangement gives Canadian firms a competitive advantage over their competitors not only in the United States but around the world. This system which promotes the fundamental unfairness in our trade with Canada cannot be left unaddressed. And yet, the Free Trade Agreement does not require or even speak to the removal of these subsidies. Rather, it leaves them in place, and compels US industries to compete against the Canadian government rather than against their private enterprise.

Nowhere is this unfairness more pronounced than in the natural resource area. In this regard, I ask you to note an article that appeared in The Wall Street Journal on February 24, 1988 which I have attached. The article indicates that twenty US Senators have asked the Reagan Administration for guarantees that Canada will end these subsidies.

The fact that Canada is permitted to retain, and in some cases, even institute new subsidies for its industries, is made worse because the procedures for granting relief to disadvantaged US industries are being eroded. The dispute settlement provisions relating to the anti-dumping and countervailing duty law may put US industry at a more serious disadvantage vis-a-vis its Canadian competitor when a US industry petitions for redress under those laws. The agreement recently negotiated eliminates American manufacturers' right to appeal decisions of the Department of Commerce and the International Trade Commission to US courts. Instead, for cases involving Canada, appeals will be made to a bi-national commission composed of US and Canadian members not all of which are lawyers. This is a flagrant signal that in the future these issues will be decided not on a legal basis but rather a political one. This situation is especially ironic in view of the actions taken by the Congress over the last ten years in an attempt to remedy the weakness of our unfair trading laws.

In the late 1970's, the Congress removed the administration of those laws from the Department of Treasury and placed them in the Department of Commerce. This was done primarily because Treasury had been lax and ineffectual in administering the laws against the massive dumping of foreign-made TV sets which devastated the US industry during that time. Since the 1980's, the Department of Commerce has built a solid reputation by carrying out the intent of Congress and making these laws work. The process has been depolitized and put on a strong legal foundation. This will be thrown out the window as this bi-national panel called for by the Free Trade Agreement "repolitizes" the entire process. In addition, it will also lead other countries to want a "quick fix" whenever a decision goes against them.

We believe Congress should look very closely at the bi-national panel and dispute settlement provisions in the Free Trade Agreement. By handing over to a panel of Canadian and US political and legal individuals authority and responsibility that previously existed in the courts, Congress cannot be assured that its "will and intent" will be carried out. It is the Courts of the United States that assure that Congressional will and intent incorporated in public law is carried out by the Executive Branch. But, instead of the courts looking at how the unfair trade laws have been applied in specific cases, we will have a bi-national panel doing this job. This is the worst kind of encroachment by the executive branch into Congressional responsibilities.

We are also taken back by the euphoria of Administration negotiators who are saying that this particular agreement is the model for future trade agreements with other countries. These negotiators continue to assert that as the Uruguay Round proceeds, the Canadian agreement will be a model for our negotiators. Only action by the Congress to set Administration negotiators straight can forestall similar disastrous agreements in the future.

I would also like to deal upfront with a lobbying tactic used by the Administration when they say that if this agreement is not adopted under the fast track procedure, they will be unable to negotiate any future agreements. We believe that Congress should ask itself whether it wants any more agreements negotiated and submitted under a fast track procedure if those agreements are going to resemble this one. We don't need agreements for their own sake. We need agreements which will serve American interests and allow US industries and American workers to prosper.

Our negotiators must be told they did a poor negotiating job. The reason Labor strongly supports the Gephardt Amendment is because our negotiators consistently sell us out at the negotiating table.

Upon closer examination, this agreement should be looked on by the Congress for precisely what it is, a crude attempt by the Reagan Administration to preserve an allied conservative government in a neighboring country. Judging by the increase in Mulroney's stature in the public opinion polls since this agreement was signed, the Administration may accomplish its goals. Sadly, however, freer and more fair trade will not have been served, and US balance of payments will not have been helped. We believe this agreement should be sent back to the table for renegotiation to seek a more equitable and satisfactory result.

The Wall Street Journal
Monday, February 22, 1988

Some Western Senators Plan Challenge This Week to Trade Accord With Canada

By Walter S. Mossberg
Staff Reporter of The Wall Street Journal

WASHINGTON—A group of senators from Western states, including senior Republicans, plans this week to mount the first serious challenge to the proposed U.S.-Canada trade agreement, which they contend is unfair to their region's natural resource industries.

In a letter they have drafted for delivery to President Reagan tomorrow, the a senators say they want to tie tariff reductions granted in the pact by the U.S. to certain Canadian promises, including the elimination of Canadian natural-resource subsidies that the pact leaves untouched.

An administration trade official said, "I really, really doubt if that would fly with the Canadians." If the Western senators stick to their position, the White House may be forced either to press Canada to reopen the agreement on subsidies Ottawa considers sacrosanct, or face a Senate revolt that could jeopardize approval of the legislation needed to implement the pact.

The senators' challenge could also make it politically tough for other Western politicians, including House members and governors, to support the agreement as it stands. The National Governors' Association is expected to vote on it tomorrow.

Sen. Max Baucus (D., Mont.), who with Sen. Pete Domenici (R., N.M.) organized the letter, said in an interview, "We think it's fine for the East, it's good for financial interests and manufacturing. But it doesn't help the industries important to our region, like non-ferrous metals, coal, plywood, uranium, wheat."

He added that "if these problems aren't addressed, I'll be forced to oppose the agreement, and I believe that's the view of a good number of others in the group."

Sen. Baucus's office said that as many as 20 senators are expected to sign the letter, including Alan Simpson (R., Wyo.), the No. 2 GOP leader; Malcolm Wallop (R., Wyo.); Orrin Hatch (R., Utah); Dennis DeConcini (D., Ariz.), and Frank Murkowski (R., Alaska).

The accord won't be submitted to the Senate as a treaty, requiring two-thirds approval. Instead, both the House and Senate will vote on legislation implementing the pact. Under special "fast-track" rules, the bill will require only majority approval and must be voted on without amendments within 90 legislative days of its submission.

Administration officials privately concede that the pact doesn't stop Canadian subsidies that are the bane of the natural resource industries, but they point out that companies can still act against Canada under the trade laws. They have privately expected to lose some Western votes, but hope to discourage key Republicans, such as Sens. Simpson and Domenici, from actively leading opposition.

The administration will try to satisfy congressional gripes by fashioning language that is politically acceptable, but not so tough as to require new confrontations with Canada that might sink the pact. The White House wants to ward off any rule changes that would permit crippling amendments.

The draft letter expresses the hope that language can be worked out to meet the West's concerns. But it warns against leaving senators with "no alternative short of amending the fast-track process or opposing the agreement outright." In addition to pledges to end subsidies on metals, coal and wheat, the senators want restrictions lifted on U.S. plywood imports; protection for the U.S. uranium industry from Canadian imports made likelier under the pact, and U.S. regulatory changes in the pricing of Canadian natural gas.

Chairman GIBBONS. Mr. DiPaola.

STATEMENT OF DOMENIC DiPAOLA, GENERAL PRESIDENT, INTERNATIONAL LEATHER GOODS, PLASTICS & NOVELTY WORKERS' UNION, AFL-CIO

Mr. DIPAOLA. Thank you, Mr. Chairman.

My name is Domenic DiPaola. I am a third-generation leather worker, presently the international president of our union, whose headquarters are principally located in New York City. Nine thousand of our members live and work in the New York-New Jersey metropolitan area. We have 3000 Canadian members as well as members throughout the United States and Puerto Rico. Among other things, our members make handbags, luggage and personal leather goods.

On behalf of the members of my union both in the United States and in Canada, I am here to express our serious reservations about this agreement and our opposition to its approval.

We have looked at this agreement carefully and we have concluded that our members on either side of the border have nothing to gain from it and much to lose from it. The United States is already up to its ears in imports, as demonstrated by the import penetration rates for luggage at 69 percent, handbags at 86 percent and personal leather good at 46 percent.

These import penetration rates and other economic indicators of the poor health of these three industries are shown in the table attached. We believe quite sincerely that the agreement cannot help our already impaired condition but certainly will worsen it.

Our members have consistently opposed any proposal that would lower or eliminate tariffs on luggage, handbags and personal leather goods. The United States-Canadian agreement could result in tariffs being phased out on the articles which our members produce over a period of 5 to 10 years. Even though the rules of origin that determine whether a product originates in Canada or the United States, thus making it eligible for duty-free treatment, are reasonable, we are very concerned that enforcement of these rules will be lax. Customs on both sides of the border have their hands full right now and cannot be expected to enforce a free-trade-area agreement effectively when they have higher priorities and budget constraints. There is certainly an enormous incentive as duties fall and approach zero for Far Eastern countries, among others, to transship their goods through Canada. In the case of textile products, there is also the added incentive of circumventing quota arrangements. Duties on our products are substantial enough, ranging up to 20 percent, to encourage transshipments and other customs fraud.

We view foreign-trade-area agreements as no more than a backdoor approach to eliminating tariffs on our products. Tariff reductions have traditionally been negotiated in a multilateral context, and with concern for the import sensitivity of the product involved. These free-trade arrangements, which this administration and some in Congress seem so fond of, represent a major departure from trade policy. Tariffs are being cut bilaterally with little or no concern for the import sensitivity of the product involved. Congress has legislated its concern for import-sensitive products not only with regard to past trade rounds, but also in the GSP program and the Caribbean Basin Initiative where the articles are excluded by name from duty-free treatment.

The Reagan administration defends these exceptions from the norm, the free-trade-area arrangements, as being just that, exceptions. They argue that trade from Israel individually or Canada individually or the Caribbean individually in these products is so minor that U.S. workers and producers could not possibly be hurt by the small amount of duty-free trade. This is nonsense. Our members can add, and the cumulative effects of this duty-free trade will kill us, particularly when we exact little in the way of discipline from these countries over their subsidy practices and cave in to their demands on such issues as sovereignty over our own trade laws.

Moreover, these free-trade agreements will not stop here. Many in the administration and Congress think they are a nifty idea and would like to see more of them with our Asian trading partners, Mexico, Japan and others. These agreements merely provide more opportunities for importers to saturate our market with imports.

I can tell you that American labor is having a hard time understanding why Congress is backtracking on its past policies to provide some cover for import-sensitive industries in the face of mounting trade deficits in these industries and in others. Our members in the United States have lost thousands of jobs over the past several years because of imports. Over the last 5 years 11,000 jobs were lost in the luggage, handbag and personal leather goods industries, representing a decline in employment of at least one fourth. These are not high-paying jobs nor are they held by people who are easily re-employed. Our members are minorities, women and immigrants, many of whom live in the inner-city. They do not have many job opportunities once they lose their jobs to imports.

We hope that this Trade Subcommittee will consider the ramifications of these duty-free arrangements on American men and women who hold jobs in these industries. Tariffs on imports of leather products do make a difference. To reduce our tariffs means more jobs lost to our members. There is no reason to sacrifice jobs on either side of the border on the altar of free trade and the expediency of politics. We urge the subcommittee not to report out the agreement favorably.

Thank you.

[An attachment to the statement of Mr. DiPaola follows:]

SELECTED ECONOMIC INDICATORS OF THE HEALTH OF THE LUGGAGE, PERSONAL LEATHER GOODS, AND HANDBAG INDUSTRIES

	Luggage (SIC 3161)	Personal Leather Goods (SIC 3172)	Handbags (SIC 3171)
Employment (number of employees)			
1982	13,700	11,700	16,400
1983	12,900	11,100	15,000
1984	13,200	11,000	13,500
1985	11,300	10,200	11,300
1986	10,900	9,200	10,600
1987	11,000(P)	n/a	n/a
Production/Shipments			
	(million dollars)	(million dollars)	(million units)
1982	647.0	393.0	45.9 (E)
1983	676.0	419.0	43.3 (E)
1984	718.0	405.0	39.4 (E)
1985	627.0	402.0	34.5 (E)
1986	609.0 (E)	393.0 (E)	33.7 (E)
1987	639.0 (E)	408.0 (E)	34.9 (E)
Imports			
	(million dollars)	(million dollars)	(million units)
1982	334.8	87.5	164.0
1983	399.9	105.2	184.1
1984	549.2	133.6	199.5
1985	597.6	146.9	200.6
1986	679.4	176.3	193.3
1987	838.4	221.6	202.8
Import Penetration* (percent)			
1982	48	26	81
1983	51	28	83
1984	57	34	85
1985	62	36	86
1986	65	41	86
1987	69	46	86

* For the luggage and personal leather goods industries, where import and production data are available only in terms of value, import penetration has been estimated to reflect estimated penetrations in terms of units.

(E) - Estimated
(P) - Preliminary
n/a - Not available

Source: Economic Consulting Services Inc., based on U.S. Department of Commerce and Bureau of Labor Statistics data.

Chairman **Gibbons**. Your testimony, gentlemen, is not unexpected. I have listened to you for many years. I am just glad the United States became the United States before you all became as powerful as you are, or there never would have been a United States. We would cut up countries the size of Connecticut or smaller. But that is water over the dam and there is not a thing we can do about it.

But if this agreement is as bad as you say it is, why doesn't Canadian labor and the Liberal Party up there jump at it? It looks like we have given them every advantage on earth.

Mr. **Oswald**. I think the Canadian labor movement's concern is that they will lose their sovereignty and culture, and the feeling there is that they will be dominated by the Americans.

The American labor movement, on the other hand, I think, is very concerned with the advantage the Canadians have in terms of the exchange rates and the other specific protections that are maintained for the Canadians in the agreement and that effect on jobs.

So I think the approach is different, but the opposition is similar in Canada by the trade union movement there as it is in the United States?

Chairman **Gibbons**. Is there any country on earth that you all would think we could tear down trade barriers between?

Mr. **Oswald**. Mr. Chairman, we don't think this tears down the trade barriers. It leaves the biggest trade barrier, the exchange rate, in effect. It continues to provide Canadians a 28 percent advantage and in essence the exchange rate puts a 28 percent tariff on our goods when they go there.

Chairman **Gibbons**. You think anybody whose currency is worth less than ours has that advantage on us?

Mr. **Oswald**. Mr. Chairman, if the people can't buy the same thing with their earning power, then they have an advantage if that exchange rate is set in such a way and I think——

Chairman **Gibbons**. You think the exchange rate between Canada and the United States is set in some way other than by market forces?

Mr. **Oswald**. Yes, Mr. Chairman. You had spoken earlier about the small amount of effect of trade in goods versus the total effect of money that is exchanged in the world. I think that is an example to say that simply when you look at all the exchange of money in banks in the United States that to say that the effect of the Federal Reserve Board is so minor that it has no effect on interest rates in the United States would be to not understand the real impact of the Federal Reserve Board.

And similarly, we believe that the effect of central banks, the effects of governments in terms of trying to influence exchange rates does play a role in terms of the levels of those exchange rates, and we find that a number of countries have established a new way of getting trade advantage, and that is "competitive devaluations of their currency." That has become much more important in the world today than tariffs, and it has the same effect.

So there is a quote that Mr. Kirkland often makes in terms of referring to exchange rates. "The only difference between an exchange rate and a tariff is that a tariff provides funds to the Treasury and the exchange rate does not."

Chairman GIBBONS. Do you have any evidence that there is a rigged exchange rate between the United States and Canada?

Mr. OSWALD. Mr. Chairman, I don't have evidence that there is a rigged exchange rate, but I think that the evidence clearly indicates that the deterioration of the exchange rate has provided a substantial Canadian advantage. It shows up in the trade deficit that the United States has with Canada. It is some $12 to $18 billion, depending upon which of two measures you use.

Clearly, in the 1960s, when we did have equal exchange rates, we had negotiated agreements. For example, the auto workers had brought the Canadian auto workers' wages up to equal the United States, and established a cost-of-living escalator clause that was based on "the United States and Canadian cost-of-living indexes," but that no longer is meaningful today with the big difference in exchange rates. That has gone out the window.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you very much, Mr. Chairman. And, gentlemen, I appreciate your testimony.

I think Mr. Oswald has already cleared up a source of confusion that I had, and that is, we often hear of American companies and American workers saying that they fear for their jobs because of all these Canadian imports that will come in if this agreement is reached, and yet I heard you say this morning that your Canadian affiliates also oppose the pact.

It seems to me that if the American workers are right, the Canadian workers ought to be pleased with the agreement. I guess I hear you saying that the Canadian workers are concerned for a different reason; that is, ownership of Canadian companies by American interests rather than the flow of trade itself.

Mr. OSWALD. That is correct.

Mr. PEASE. Is there an acknowledgment on the part of the Canadian workers that you represent that probably there will be greater exports from Canada to the United States?

Mr. OSWALD. In our discussions with the Canadian Labor Congress, who strongly oppose this as well as their issues, have essentially been issues of national concern with Canadian sovereignty and identity. We have not talked about, nor have they indicated, whether there would be greater advantage or disadvantage in terms of the trade arrangement.

Mr. PEASE. I see.

I want to commend you, Mr. Oswald, for raising in your testimony the issue of exchange rates. I think that is a critical issue that we in Congress have got to deal with.

Mr. Chairman, we do have a couple of months before this agreement is submitted to the Congress officially, and a few months after that before we actually vote. I would hope that we as a subcommittee could ask the Treasury to supply us with information on which we could base an attitude.

Chairman GIBBONS. I am sorry. I didn't hear the last part of your comment.

Mr. PEASE. I was saying, in the interval we have here, I hope that the subcommittee could ask the Treasury to supply us with information that would be helpful in our determining whether there is an implicit subsidy or not in the exchange rate situation.

Generally, key determinants of exchange rates are inflation, productivity, and terms of trade, and I would ask you if you would mind requesting the Treasury to do a study which would show us relative changes in those three factors in terms of inflation, terms of trade and productivity in the United States and Canada over the past 10 years or so.

Chairman GIBBONS. I would be happy to. If you will prepare a letter for me, I would be happy to sign it.

Mr. PEASE. I appreciate that very much.

Maybe all three of you gentlemen can comment on this. Is a factor in your concern about this agreement the likelihood that jobs which are lost on both sides of the border will be in the manufacturing area, whereas jobs that are gained on both sides of the border are likely to be in the service area? And generally speaking, the manufacturing area is unionized and the service area is not unionized.

I think it would be entirely within your rights to be trying to advance the interests of your own members in that regard, but do you see the situation in this light, that there would be a loss of manufacturing unionized jobs and a gain of service and nonunionized jobs?

Mr. OSWALD. Well, Mr. Pease, while there are many organized service workers as well, most service workers earn less than manufacturing workers, and we do see that in that sense it would be a loss of earnings for many workers if that shift occurs, and we think that that shift is provided for in this agreement both in terms of its heavy emphasis on services and on investment.

One sector particularly shows it—telecommunications, where the agreement provides for special access for the flow of telecommunications services, but doesn't open up some of the restrictions that exist in Canada to the buying of telecommunications equipment. So that that is just one of a specific example as well as what we are concerned with as the general trend.

Mr. LOCIGNO. Mr. Chairman, the membership of the International Brotherhood of Teamsters is completely integrated in both the manufacturing and service sectors, so we are perhaps looking at it from a different perspective because of our wide range of diversity.

I think that the best thing that can be said for this agreement is that labor unions are in the people business. We don't make products; we are only trying to keep our people in the economic mainstream of society and society as a whole. We are for free trade, and this agreement certainly does not reflect free trade. I think it puts the United States at a serious disadvantage, not only in manufacturing but service and other sectors.

I, in my written testimony, address the western resource issue. It has bipartisan objection, and I think that if we are going to have a free-trade agreement, we can't have all these lopsided restrictions that put us at a disadvantage. We are the only ones that want to play by the rules, it seems.

Mr. PEASE. Mr. Locigno's testimony I think raises some good questions with respect to tariff differentials under the agreement, subsidies on the part of the Canadians, and also differential regulations regarding access of trucking companies in both countries.

And again, I hope our staff could examine his testimony very carefully.

Mr. DiPaola I thought raised a good question also, which I hope will be addressed by the committee, and that is the concern over the circumvention of textile quotas. We have been tussling now on this committee for a couple of years now with the vastly increased imports of textiles and garments into this country, and while there have been a lot of differences of opinion on how to deal with that, I don't think there is a whole lot of argument that there has been a significant impact from imports.

The Multifiber Agreement is supposed to regulate the flow of textiles into this country. We don't have an MFA agreement with Canada, and I am wondering if what you are suggesting, Mr. DiPaola, is that, say Asian countries could ship textiles into Canada and have them transshipped to the United States and you see no barrier to that in this——

Mr. DiPaola. From our knowledge, there are no restrictions on our products going from the Orient and being transshipped through Canada to circumvent the tariffs and dump on the United States; we have been dumped on through the years in great amounts.

Mr. Pease. Mr. Chairman, I think we can safely assume that there are people in the Far East and in Canada smart enough to figure out that this is a loophole that one could drive one of Mr. Locigno's trucks through. I would be very concerned if that is indeed the case.

Thank you, gentlemen.

Chairman Gibbons. That can't happen. Those were not Canadian products. This just applies to Canadian products. The rules of origin would not allow that to happen. That is a bare misrepresentation of the facts.

Mr. Oswald. But often as a result of the free-trade agreement, we will remove many of the Customs agents just because there will be the impression that there is no need for Customs agents because there is a free-trade agreement.

As a result, I think that there will be very little inspection of any of the goods that cross the border, and while the laws may be there, there wouldn't be anybody there to enforce them.

Chairman Gibbons. As powerful a position as you and your organization have in the Nation, I am sure there will be a lot of people on the border counting socks and underwear and every other thing that comes in. I am not worried about that. You vastly underestimate your influence in the textile lobby.

Mr. Pease. Gentlemen, in the late 1970s, the greatest threat to employment in my district of Ohio was the lack of natural gas. We had plants closing down because they could not get access to natural gas. And one of the things that I find attractive about this agreement is the prospect of unlimited access to Canadian natural gas in the event—almost a certainty—that sooner or later we will run into problems with natural gas supplies.

Do you see that as an advantage of this agreement?

Mr. Oswald. Well, Mr. Pease, in general I think it does provide some short-term advantages for some communities in terms of access to natural gas. We have had some experiences, though, on the electric transmission that wouldn't assure us we could avoid disruptions of imported energy.

Quite a bit of the New England electric grid is tied into the Quebec hydro relationship, and recently when there was a big outage in Montreal, the Canadian grid shut off the U.S. exports and used this supply for Canada. These electrical imports were Canadian power, they had a need, they had a shortage, and they shut off the United States. Even though Canada is a very friendly country, we should be concerned that if there is a natural gas problem at some time in the future, there might also be shut off at some point.

And we are concerned with the Alaska oil provisions in there, that for the first time would break what we thought was an agreement when that pipeline was built, that that pipeline oil would be used for United States purposes, not for foreign purposes.

Chairman GIBBONS. Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

Gentlemen, I thank you for your testimony and your views on this. I don't think we want just a rubber stamp—everybody coming in and saying how marvelous this agreement is. We appreciate having your diverse opinions.

Mr. Locigno, for years I have heard a "horror story" about American trucks delivering some steel to Canada and when they get to the border, they have to stop those American trucks with American truck drivers, unload the steel, and put it on a Canadian truck before it can be delivered. Yet if the same steel comes into the United States on a Canadian truck, it drives over the border and goes to Detroit or L.A. or Dubuque or wherever it wants to go, and turns and goes back. Is this true?

Mr. LOCIGNO. In the area of special commodities, let me tell you what the current situation is at the United States-Canadian border. If a United States trucking company has a bill of lading for a one-stop item, if he has two washers and driers to take across the border, the Canadian customs inspects every load, unlike our Customs agents who wave and flag them on.

There was testimony two weeks ago that the Customs people gave on the Maquiladora problem in Mexico which is similar to the United States-Canadian problem.

Mr. SCHULZE. I hoped to be able to stand there and watch the process.

Mr. LOCIGNO. It is a very unique experience. I would encourage you to do so.

The unit will be permitted to enter Canada if it is in a certain radius to drop the one stop commodity and if it does not interfere with another province who has their own regulations. Today, with economic demands of businesses to do what they can for productivity, I assure you those trucks have more than one stop on them or more than one delivery or shipment because they want a full truck to go across. If that is the case, it goes to a marshaling yard across the border and the American company and the driver's participation in delivering the commodities ceases.

Mr. SCHULZE. So if you are taking one product with one stop to one company——

Mr. LOCIGNO. Within that——

Mr. **Schulze**. Under those circumstances, if it is one province, you may deliver it, but if it is—and I would guess most truck deliveries are multiple stops——

Mr. **Locigno**. That is correct. In addition, by their provincial laws, those trucking companies are required to buy fuel in Canada, even though most trucking companies have their own fuel, have their own fuel tanks and would like to do it in-house because they save a substantial amount of money. They buy it wholesale. Our drivers are required to purchase fuel based on the mileage that they travel in Canada to make that stop at retail prices.

Mr. **Schulze**. In other words, if you utilize 40 gallons——

Mr. **Locigno**. That is correct, and they must have a receipt and a fuel stamp to show at the border.

Mr. **Schulze**. Did our negotiators say, "That is fine, we are happy to do that, but your trucks will do the same thing"?

Mr. **Locigno**. To industry people, their answer was negotiations were going to lay that segment aside because we are going to rely on the Canadian Government to have a national trucking system and have a form of deregulation like we have. That is fine in this country. It was passed by Congress, but that does not circumvent their provincial rules and regulations that they have that are still in effect.

Mr. **Schulze**. Let's just take the trucking area. Will that be actionable after this is implemented? Can a trucking firm say this is unfair and take it to the panel and, in turn, will the panel be able to do anything about it?

Mr. **Locigno**. No.

Mr. **Schulze**. Mr. Oswald, one question. You were known in Washington as a distinguished economist, and your reputation is worldwide. I have heard stories that this Canadian trade agreement will help both GNP in Canada and the United States. It will help the Canadian GNP 9 percent and the United States GNP 1.5 percent. Do you agree with those figures?

Mr. **Oswald**. We have not made a study of the impact on the overall GNP. Obviously, general trade with Canada amounts to something like $150 billion between our two countries. What we see is an impact within the current arrangement of trade deficit of $12 to $18 billion, and that most likely this agreement will not improve that trade deficit situation and well may worsen part of that trade deficit situation. We have not made an estimate tying it, moving from the trade situation to the GNP.

Mr. **Schulze**. Thank you, gentlemen. Thank you, Mr. Chairman.

Chairman **Gibbons**. Thank you very much, gentlemen.

Now we will have a panel, from the United States Chamber of Commerce, John R. Mullen, corporate vice president, Johnson & Johnson Corp.; from the National Association of Manufacturers, Lawrence A. Fox, vice president, international economic affairs; from the National Foreign Trade Council, Inc., Richard W. Roberts, president; and from the Emergency Committee for American Trade, Robert L. McNeill, executive vice chairman.

Gentlemen, we welcome you. Mr. Mullen, you may proceed.

STATEMENT OF JOHN R. MULLEN, CORPORATE VICE PRESIDENT, JOHNSON & JOHNSON CORP., AND MEMBER, CANADA-UNITED STATES RELATIONS COMMITTEE, UNITED STATES CHAMBER OF COMMERCE

Mr. MULLEN. Thank you, Mr. Chairman, members of the subcommittee.

I am John R. Mullen, corporate vice president of Johnson & Johnson, of New Brunswick, N.J. I am also a member of the Canada-United States Relations Committee of the United States Chamber of Commerce on whose behalf I am appearing today. I am representing the chamber in place of its Canada-United States Relations Committee Chairman Raymond F. Farley, president and chief operating officer, Johnson Wax Co. of Racine, Wis. Mr. Farley is chairman of the Canada-United States Relations Committee.

The U.S. Chamber of Commerce strongly supports the trade agreement. The chamber's membership is extensive and diverse, so the decision to support this agreement was studied very carefully. In fact, it was not until February 10 of this year that the chamber board officially endorsed the agreement.

The reason for the delay in the endorsement was because the chamber was interested in getting the views of its members, including the views of important committees of the chamber, in addition to the Canada-United States Relations Committee. Those committees included such areas as international trade and investment, small business, natural resources and agriculture.

In supporting the agreement the chamber recognized that the pact failed to deal with all outstanding disputes between the two countries and that it would entail adjustment problems for some industries and individual producers. However, it was the chamber's view that the agreement should be implemented because of the long-term benefits that it would bring to the economies of Canada and the United States as a whole.

Our statement can be summarized as follows. The chamber has had a longstanding interest in Canada and United States relations, going back to 1933 when it organized a joint committee with the Canadian chamber. This committee has met at least semiannually every year since 1933 so that it is not a specially organized focused committee for this agreement alone.

It is our view that a successful bilateral agreement with Canada would restore some momentum to the struggling multilateral efforts to liberalize trade and investment.

It is our view as a chamber that the trade agreement will provide U.S. exporters, particularly in the small business sector, with lucrative new opportunities. I should mention that 92 percent of the chamber's membership of 180,000 firms is in the small business community, members whose employment is 100 individuals or less. And 50 some percent of the chamber membership are employers of 10 or less employees. So the small business component of the chamber is very significant indeed.

It is also our view at the chamber that the restrictions on U.S. investment in Canada will be drastically curtailed. Thus, many new opportunities will be open for U.S. industries, both large and small. We can all look back, of course, to the time of the Trudeau administration in Canada and the Foreign Investment Review Act and other investment restrictive rules that the Canadian Government had in place, but this agreement, enhances the opportunities for U.S. investment in Canada.

The chamber will be working actively with its membership, and particularly its federation of State and local chambers, to convey the support of the chamber and its membership to the Congress of the United States and the individual members that make up that body.

As I indicated, our joint committee with Canada was established in 1933, in response to the Reciprocal Trade Agreement Acts in an effort to pave the way for bilateral reductions of the high Smoot-Hawley tariffs then in force. The committee consists of two national sections, each operating under the aegis of its national chamber. This joint committee operates on a consensus basis, and before the joint committee takes action on a particular issue, it must have the agreement of both national section.

Further, the long history of the committee reinforces the soundness of the position that has been taken on this free trade agreement. The committee, as I indicated, is not an ad hoc arrangement, and we have had continuing dialog since 1933 on the key bilateral issues confronting our nations. The approach of the chamber's committee to the proposed agreement, after declaring its support of its broad goals, was to try to develop answers to unresolved aspects of the proposal. Thus, the chamber commissioned research studies to determine the benefit for both countries that might be anticipated from this agreement.

Further, additional studies were commissioned to focus on alternative forms of workable dispute settlement mechanisms. The committee also surveyed the positions of its membership on the proposal. We believe that this is a very significant step forward in bilateral trade relationships and believe that this agreement can serve as an effective model for future multilateral discussions. In fact, if Canada and the United States cannot reach an agreement to enhance the free trade opportunities between our two great nations, certainly no other two nations in the world can.

We strongly endorse the view that this successful culmination of our trade negotiations with Canada will have multilateral effects. Further, it was interesting to us that the Confederation of British Industries, with some 240,000 members, has written to the chamber of commerce supporting this proposed agreement between Canada and the United States.

If we go back in time some 10 years when economic nationalism was at its zenith in Canada, it would have been inconceivable to think we would today, in 1988, be looking at the elimination of Canada's trade and investment barriers to the degree that has been provided in this agreement. For American exporters, the tariff concessions alone seem to justify the agreement, but, the agreement goes much further in enhancing investment opportunities, service opportunities, energy opportunities, and in developing a supplemental dispute settlement mechanism.

In fact, they have told us that this is the broadest trade agreement ever negotiated between two nations of the world. As a general rule, larger corporations who export to Canada, such as Johnson

& Johnson, who I represent, are well aware of the opportunities created by this agreement. But to assure ourselves in the chamber that had our fingers on the pulse of our membership, the chamber surveyed a group of 800 U.S. corporations for their views on the agreement. Their response was overwhelmingly positive in terms of expected efficiencies and sales opportunities that would accrue to those 800 companies, most of whom were already active in Canadian business in some manner, shape or form.

We have provided a summary of some of those benefits as an attachment to this agreement, and earlier, in 1987, provided a summary of that survey to the members of this committee, as well as the full membership of the Congress.

We believe that significant impediments to small business exports to Canada have been, in addition to high tariffs, Canadian customs and immigration procedures and the plethora of rules and regulations that characterize the Canadian business environment. It is much more difficult for smaller firms to persevere in the face of those impediments, lacking the expertise and general resources available to larger firms. Many small firms have, therefore, been discouraged in their efforts to penetrate the Canadian market.

Therefore, we believe significant consequences of this agreement will be the opening up of those markets to American small business.

There are also significant inducements for American small business firms in the reduction of the threshold for Canadian Government procurement to $25,000. It has been estimated that some $500 million in annual sales opportunities to the Canadian Government will be opened up to U.S. firms.

Also we believe that the tariff eliminations will give a competitive advantage to U.S. firms in comparison to and in competition with foreign exporters to Canada who will still have to pay the higher Canadian tariff.

In summary, the Chamber of Commerce of the United States believes that the proposed agreement would provide very substantial benefits to both countries in terms of increased trade and investment and the implications of improved competitiveness.

Further, the commitments on issues like services, trade and intellectual property protection would improve the chances for similar breakthroughs in the GATT and other trading arrangements.

The Chamber is sensitive to the adjustment problems that the agreement would entail for some firms and industries. Clearly, while we anticipate increased exports to Canada, we can also expect more imports from Canada. Still we must remember that the agreement could not remove every friction between our two countries, it represented a negotiated process, and the best way to judge it is to ask: Is it the best deal we could get? Not is it the best possible deal? We believe it is a great improvement over our trading relationships and present a new opportunity for our two great nations.

We believe that the Congress of the United States in approving this agreement should encourage both governments to make firm commitments to continue to work for the resolution of other differences which have not been removed by this very broad agreement, and that the Congress should insist on this in the drafting of the implementing legislation. We believe that the various outstanding disputes between Canada and the United States, as well as those triggered by the agreement, should be placed on a special agenda where they can be considered in a cohesive fashion. It is essential that industries be provided with the assurance their concerns will be addressed with urgency and effectiveness.

In closing, let me reiterate that our support for comprehensive bilateral trade agreement has evolved through a long process of consultation with business and government at all levels and in all parts of Canada and in the United States. We are convinced that the long-term benefits will far outweigh the cost of adjustment to new competition that may be necessary on both sides of the border.

Thank you very much, Mr. Chairman.

Chairman GIBBONS. Thank you very much.

[The statement of the U.S. Chamber of Commerce follows:]

STATEMENT
on
THE CANADA-U.S. FREE TRADE AGREEMENT
before the
SUBCOMMITTEE ON TRADE
of the
HOUSE COMMITTEE ON WAYS AND MEANS
by
JOHN R. MULLEN
February 26, 1988

Mr. Chairman and members of the Subcommittee, I am John R. Mullen, Corporate Vice President of Johnson & Johnson, of New Brunswick, New Jersey. I am also a member of the Canada-U.S. Relations Committee of the U.S. Chamber, of Commerce on whose behalf I am appearing today. I am representing the Chamber in place of its Canada-U.S. Relations Committee Chairman, Raymond F. Farley, President and Chief Operating Officer, Johnson Wax Company, of Racine, Wisconsin.

The U.S. Chamber of Commerce strongly supports the Free Trade Agreement. Because the Chamber's membership is so extensive and diverse, the decision to support the agreement was not made lightly. In fact, the Chamber's Board of Directors did not endorse the agreement until its meeting on February 10. The Board considered not only the views of the Canada-U.S. Relations Committee but also those of its other committees covering such areas as international trade and investment, small business, natural resources, and agriculture.

In supporting the agreement, the Chamber recognized that the pact failed to deal with all outstanding disputes between the two countries and that it would entail serious adjustment problems for some industries and individual producers. However, we believe that the agreement should be implemented because of the long-term benefits that it would bring to the economies of Canada and the U.S. as a whole.

This statement may be summarized as follows:

- The Chamber has a long-standing interest in Canada-U.S. Relations, going back to 1933 when it organized a joint committee with the Canadian Chamber of Commerce. Chamber decisions on Canada-U.S. issues reflect not only the endorsement of its domestic membership but also a consensus with the national Canadian organization.
- A successful bilateral agreement with Canada will restore momentum to multilateral efforts to liberalize trade and investment.
- The trade agreement will provide U.S. exporters, particularly in the small business sector, with lucrative new opportunities.
- Restrictions on U.S. investment in Canada will be drastically curtailed, thus, many new opportunities will open to U.S. industries.
- The Chamber is working actively with its members, particularly its federation of state and local chambers, to convey their support for the agreement to Congress.

Background of the Canada-U.S. Relations Committee

The Canada-U.S. Relations Committee was organized in 1933 as a joint committee of the U.S. and Canadian Chambers of Commerce. It was organized in response to the Reciprocal Trade Agreements Act in an effort to pave the way for a bilateral reduction of the high Smoot-Hawley tariffs then in force. Over the years, it has had an impact on a great variety of issues bearing on economic relations between the two countries -- from acid rain to the organization of the International Joint Commission.

The Committee consists of two national sections, each operating under the aegis of its national chamber. It operates on a consensus basis -- before taking action on an issue, it must have the agreement of both national sections. This means that recommendations and policy positions of the Committee embody the views of representative and responsible groups in both countries. Accordingly, this consensus approach means that the Committee's support for the agreement reflects the views not only of American business but also of Canadian business. The Canadian Chamber speaks for individual corporations and for chambers of commerce and trade associations in all regions and sectors of Canada.

Further, the long history of the Committee reinforces the soundness of its position on the agreement: it is not an ad hoc arrangement, but one that has been involved intimately in the pros and cons of numerous bilateral issues since well before the Second World War.

The approach of the Chamber's Committee to the proposed agreement, after declaring support for its goals, was to try to develop answers to unresolved aspects of the proposal. Thus, research studies were commissioned to determine the precise benefits for both countries that could be expected. Several studies focused on the precise form of a workable dispute settlement mechanism. The Committee also surveyed the positions on the proposal of corporations, trade associations, state and local government agencies, and state and local chambers of commerce.

Copies of the studies and reports have been distributed widely in Canada and the U.S., and we are currently taking a special poll of state and local chambers. Many of those organizations will contact their Congressional representatives directly, while we shall assemble the responses into a simple report for the attention of this Subcommittee.

Positive Direction for Trade Policy

The road to free trade is a difficult one, and the ultimate goal of a world of free trade is probably something that will never be achieved. We must keep working toward that goal, however, as the alternative is to encourage the growth of trade restrictions and other forms of protection, which are the antithesis of economic growth and stability. As Phillip H. Trezise of the Brookings Institution observed, in commenting upon the increased integration of the Canadian and U.S. economies that would result from the agreement:

> To believe that this interdependence will make one or the other or both of the nations poorer requires the parallel belief that a U.S.-Canadian border studded with obstacles to the movement of goods, services, and capital must contribute positively to national welfare in both countries.*

In recent years, efforts to achieve trade liberalization through traditional multilateral channels, most notably the General Agreement on Tariffs and Trade (GATT), have lost momentum. Due to a combination of factors, including sluggish demand in industrialized economies and the debt burden of developing countries, the emphasis in national trade policies has leaned to import restrictions and subsidized export activity. The discipline necessary for firm commitments to the principles of the Uruguay Round of GATT negotiations has been lacking.

We endorse strongly the view that a successful agreement with Canada would restore impetus to trade liberalization on a multilateral basis, not only in the GATT but also in all the other complementary free trade regimes. It would encourage the initiation of similar bilateral U.S. agreements with other countries. Above all, it would provide future administrations with the momentum to keep trade policy on a positive and open international course.

An eloquent testimonial to the worldwide benefits of a successful agreement between Canada and the U.S. was recently expressed in a letter to the Chamber from the Director-General of the Confederation of British Industries. It stated in part that:

> . . . we note in particular that the agreement has been concluded within the framework of GATT Article 24 and welcome the willingness of the signatories to address the new issues such as services, investment and agriculture, which are also under consideration in the current GATT round . . . we believe it will be a step forward in securing the principles of free and fairer trade to which international business subscribes.

Trade and Investment Opportunities

Ten years ago, when economic nationalism was at its zenith in Canada, it would have been inconceivable to have predicted the elimination of Canada's trade and investment barriers to the degree provided in the agreement. For American exporters, the tariff concessions alone would have justified the agreement. And, as is widely acknowledged, the provisions for investment, services, energy, and other specific sectors make the pact the most comprehensive bilateral agreement ever negotiated.

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* The Brookings Review: Free Trade With Canada, Philip H. Trezise, Winter, 1988.

As a general rule, larger corporations exporting to Canada are well aware of the opportunities created by the agreement. In mid-1986 the Chamber surveyed a group of 800 U.S. corporations for their views on the proposed agreement. The response was overwhelmingly positive in terms of expected efficiencies and sales opportunities. Virtually all of the companies surveyed were already active in Canada, so they were well qualified to judge the effects of a free trade agreement. Appended to this statement is a brief summary of the agreement, which includes a listing of the agreement's major benefits. Members of this panel will focus on different types of benefits. For the Chamber, I would like to limit my comments on the benefits of closer integration with Canada to the opportunities for small business, particularly as identified by the Chamber's Council of Small Business.

Major impediments to small business exports to Canada have been, in addition to high tariffs, Canadian customs and immigration procedures and the plethora of rules and regulations that characterizes the Canadian business environment. It is much more difficult for smaller firms to persevere in the face of those difficulties, lacking the expertise and general resources available to larger firms. Many small business firms, therefore, have been discouraged in their efforts to penetrate the Canadian market. Accordingly, a significant consequence of the agreement will be to stimulate exports of these firms.

They will also have a special inducement through the Canadian decision to lower the threshold on federal government procurement to $25,000. This is estimated to open up $500 million annually to U.S. firms. Also, small competitive U.S. exporters will find that they have a special advantage over foreign exporters to Canada who still have to pay the high Canadian tariff.

Conclusion

The Chamber believes that the proposed agreement would provide very substantial benefits to both countries in terms of increased trade and investment and the implications of improved competitiveness. Further, the commitments on issues like services trade and intellectual property protection would improve the chances for similar breakthroughs in the GATT and other arrangements.

The Chamber is sensitive to the adjustment problems that the agreement would entail for some firms and industries. Clearly, while we can anticipate increased exports to Canada, we can also expect more imports from Canada. Still, we must remember that the agreement was never intended to remove every friction between the two countries. It represents a negotiated process, and the best way to judge it is to ask, if it is the best deal we could get, not if it is the best possible deal.

Nevertheless, sectors of the U.S. economy will face new competition as a consequence of the agreement. In some cases, competitive advantages will reflect differences in government support systems. It is particularly important that both governments make firm commitments to continue to work for the resolution of such differences, and Congress could insist upon this when drafting the legislative language.

We believe that the various outstanding disputes between Canada and the U.S., as well as those triggered by the agreement, should be placed on a special agenda where they can be considered in a cohesive fashion. It is essential that affected industries be provided with the assurance that their concerns are being addressed with urgency. They must be satisfied that the agreement marks not the end, but a new beginning in bilateral relations.

In closing, let me reiterate that our support for a comprehensive bilateral trade agreement has evolved through a long process of consultation with business and government at all levels and in all parts of Canada and the U.S. We are convinced that the long-term benefits will far outweigh the cost of adjustment to new competition that may be necessary on both sides of the border.

Thank you, Mr. Chairman, for this opportunity to testify. I would be pleased to answer any questions.

Attachment

CANADA-U.S. FREE TRADE AGREEMENT (FTA)

EXECUTIVE SUMMARY

STATUS & APPROVAL PROCESS

- Final text adopted December 9, 1987, and signed by President Reagan and Prime Minister Mulroney on January 2, 1988. Approval process by Congress and Parliament may be delayed until late in the year.

PROVISIONS OF THE AGREEMENT

- All tariffs to be eliminated over 10-year period.
- Most non-tariff barriers and investment restrictions are to be eliminated or significantly reduced.
- Special dispute settlement mechanism will handle trade and investment disputes between the two countries.

GENERAL IMPACT

- 1986 bilateral trade totalled $135 billion -- direct investment was $67 billion. FTA expected to increase two-way trade by $25 billion over five years. U.S. exporters will have significant advantage in Canadian market over exporters of other countries and Canadian exporters in U.S. market likewise.

MAJOR BENEFITS TO UNITED STATES

- Lucrative new export opportunities where high Canadian tariffs and restrictions removed: e.g., high-tech, capital goods, apparel, textiles, household furniture, luxury goods, auto parts.
- Termination of many Canadian agricultural quotas and subsidies will boost U.S. exports.
- Provincial policies discriminating against U.S. liquor and wine will be ended.
- Canada will improve protection of U.S. patents and copyrights.
- Canada will end many restrictions on U.S. investment and discrimination against U.S. service industries.
- U.S. consumers will benefit from lower Canadian energy prices.

MAJOR BENEFITS TO CANADA

- Vastly improved access to U.S. market will create new export opportunities and encourage new investment in Canadian industry.
- Canadian consumers will benefit from lower prices across-the-board.
- Restrictions on Canadian energy exports to U.S. will be lifted.
- Canada's aggressive commercial banks will realize opportunities for dramatic growth in U.S.

CONTROVERSIAL QUESTIONS -- U.S. VIEWS

- Canadian energy industries will have much more freedom to operate in U.S. than the U.S. industry will have in Canada.
- Canada retains its heavy discrimination against sale of U.S. beer.
- Specific U.S. sectors would experience significant new competition from Canada: e.g., uranium, steel, beef, office furniture, railroad equipment.
- Agreement failed to deal with many Canadian subsidy programs.
- Dispute settlement provisions must be firmly implemented to ensure that outstanding disputes are addressed.
- Canadian cultural industries retain their protection.

CONTROVERSIAL QUESTIONS -- CANADIAN VIEW

- Concern that economic integration with U.S. would erode Canadian sovereignty, cultural identity, etc.
- Concern that agreement concessions could be overridden by application of U.S. trade law.
- Concern over Canadian ability to compete with U.S. industry without protection.
- Concern that in absence of tariffs, U.S. industry would relocate its Canadian production facilities in the U.S.

Chairman GIBBONS. Mr. Fox.

STATEMENT OF LAWRENCE A. FOX, VICE PRESIDENT, INTERNATIONAL ECONOMIC AFFAIRS, NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. FOX. Thank you, Mr. Chairman. My name is Lawrence A. Fox, I am vice president of the National Association of Manufacturers for International Economic Affairs.

I have a long statement, and I will summarize it, with your permission.

Chairman GIBBONS. Your statement and all other statements will appear in the record in full.

Mr. FOX. NAM represents most manufacturing in the United States, about 85 percent of employees in manufacturing are members of NAM member companies, and about 80 percent of manufacturing output is also represented by our association.

Because of the importance of the trade agreement with Canada, the subject has been considered in detail by our board of directors three times and approved in its final form last February 5. The reason for the detailed consideration is obvious in view of the importance of trade between our two countries.

Let me just read to you the final paragraph of our resolution bearing on the conclusion of our board.

> Significant progress has been made on several issues of importance to American manufacturing in the judgment of the National Association of Manufacturers. The result is an agreement that would, if implemented, advance the economic interests of American industry.

The support of NAM for the agreement is a hard-headed support based on American economic interests, it is not based on sentimental attachment to our friends to the north whom we like very much, and we know they prefer cold weather more so than we, but our interest is not on that basis. Our interest in supporting the agreement is the economic benefits to American industry.

Mr. Chairman, we conclude that the agreement is a good agreement, and we are happy to support it fully.

The elements of the agreement that commend themselves to our members particularly relate to the following: first, elimination of all tariffs, a period of ten years is a reasonable period for such an extensive goal. A great easing of restrictions on investment in Canada is also part of the agreement, and, as we all know, investment and trade frequently are alternate decisions to achieve the same economic result.

Third, the freeing up of energy flows between the two countries we think is in the interest of American industries and the country generally. It will provide greater energy security for all of our people.

There are some disappointments in the agreement, of course. It hasn't accomplished the elimination of all the problems. In the disappointments area is the exchange rate. We would have preferred to have an exchange rate consultation provision in this agreement so that the subject could be discussed by the trade ministers of the two countries from time to time if there were problems to consider in that connection.

We would have preferred also that there be an intellectual property rights agreement, although progress was made to some extent in that area.

And, finally, we are disappointed in the lack of substantive new disciplines over the establishment of subsidies. We do note, however, in connection with subsidies there is a period of 5 to 7 years for the establishment of agreed rules and disciplines in that area, and we hope our Government will take advantage of that opportunity to achieve that result.

I would conclude that the agreement is such a strong step forward that we should not be confused by the councils of perfection hoping for an absolutely perfect agreement sometime in the future. This is a good agreement, and we recommend to the Congress that the agreement be approved and the implementing legislation also.

Thank you.

[The statement of Lawrence A. Fox follows:]

TESTIMONY

ON
THE U.S.-CANADIAN FREE TRADE AGREEMENT

BY
LAWRENCE A. FOX

ON BEHALF OF THE
NATIONAL ASSOCIATION OF MANUFACTURERS

BEFORE THE
SUBCOMMITTEE ON TRADE OF THE COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

FEBRUARY 26, 1988

Mr. Chairman, Members of the Subcommittee, I am Lawrence A. Fox, vice president for international economic affairs, of the National Association of Manufacturers. The subject today is the Free Trade Agreement (FTA) that has been negotiated between the United States and Canada. As you know, this agreement will have little practical meaning unless it is ratified by the passage of implementing legislation here in the United States and in Canada. It is, therefore, extremely important that the Congress make every effort to understand the effects that this agreement will have on American citizens and the American economy. These hearings are an integral part of the process of developing that understanding. We commend you for calling them, and we are grateful for the opportunity to present the views of the National Association of Manufacturers on this historic question.

I want to be clear about NAM's position on the agreement from the outset. Our members believe that the free trade agreement with Canada is a good agreement and that it will benefit American industry. Accordingly, I am here in large measure to urge the Congress and the Administration to develop implementing legislation quickly and to move that legislation from Capitol Hill to the President's desk as soon as possible.

This is not to say that we are completely satisfied with the agreement. There are things we would like to have seen accomplished which were not accomplished, and I will talk about some of those later in my testimony. But disappointments must be seen in context. The United States and Canada are both sovereign powers. Neither was in a position to ask the other to endorse its vision of a free trade agreement, and both came to the table with more hopes than any agreement could possibly have fulfilled. What is impressive is that so much was achieved and that most of the quarrels various groups have with the agreement are disappointments rather than fundamental disagreements. There are admittedly a number of people who feel that, in one area or another, the negotiators did not go far enough. Very few argue that they went too far.

THE U.S. TRADE SETTING

A survey taken of NAM's Board of Directors in the fall of 1986 showed that most of them, 96 percent, believed that the U.S. trade and current account deficits had gotten so large and their implications for the U.S. economy were so serious that they should be regarded as constituting a national crisis. As you know, the situation since then has in many respects grown worse. The U.S. trade deficit in 1987 was $171 billion, and the deficit in manufactures alone was $145 billion, or 85 percent of the total. The U.S. trade account was in deficit with virtually every major trading partner, viz.:

Japan	-$59.8 billion
the EC	-$24.3 billion
Taiwan	-$19.0 billion
Canada	-$11.7 billion
S. Korea	-$9.9 billion
Mexico	-$5.9 billion
Hong Kong	-$6.5 billion
Brazil	-$4.4 billion
Singapore	-$2.3 billion
TOTAL	-$143.8 billion, which is equal to 84 percent of the 1987 trade deficit of $171 billion.

These are troubling numbers, as I know this committee understands. Indeed, NAM has had more than one opportunity to appear here to discuss this matter with the members of this committee. On those occasions, we have argued that the U.S. trade deficit, and the problems associated with it, was caused more by the sustained misalignment between the dollar and the currencies of our major trading partners than by any other single factor. We also argued, however, that the trade deficit was a function of an unfortunate confluence of events, only some of which acted through the exchange rate, and that it would take an array of actions to reach the goal of trade surplus through competitiveness. And that, Mr. Chairman, is our goal--a trade surplus through competitiveness--adopted as such by NAM's Board of Directors in 1987.

Achieving a more competitive America will be a multifaceted, difficult task, requiring numerous changes in both government policies and corporate practices. Trade policy initiatives represent only a fraction of the agenda, but a significant fraction.

As you know, there are a number of trade issues that are likely to be decided within the next few months, as the Congress considers not only the implementing legislation for the FTA but the issues associated with the conference on the omnibus trade bill, H.R. 3. Regarding the second of these two bills, let me say that NAM believes that constructive trade legislation can and should be enacted in this session. Like the Free Trade Agreement, H.R. 3 could advance U.S. competitiveness in a number of areas. These range from benefits associated with an improved international trading regime and a successful outcome to the Uruguay Round to the elimination of some of the export disincentives we have saddled ourselves with over the years. Indeed, if we are fortunate, it will contain language requiring competitiveness impact statements for future legislation.

COMPETITIVENESS AND THE FTA

It is doubtful, however, that any component of the omnibus trade bill offers such relatively early payoffs in competitiveness as those associated with the Free Trade Agreement with Canada. The idea of free trade between our two countries is hardly new. In a sense, it is a permanent feature of the history of our two countries as the table below indicates. A fair reading of this table also suggests, however, that major breakthroughs in the U.S.-Canadian commercial relationship are rare and profoundly important opportunities. The agreement under consideration today is just such an opportunity. It is perhaps a more important opportunity for the United States than any previous agreement or possible agreement because trade and trade competitiveness are more important to us today than they have been at any other time. The agreement has twenty-one chapters. Each contains several articles, and most provisions of most articles have more than one impact on trade. This morning I would like to highlight three areas: tariffs, investment, and energy. These are among the most obvious and the most significant.

CHRONOLOGY

U.S.-CANADIAN TRADE INITIATIVES

1854	The United States and Britain agree on a Reciprocity Treaty providing for the free flow of natural products between the United States and Britain's Canadian possessions. The treaty also provides for reciprocal access to the Atlantic fisheries and to the Saint Lawrence and Great Lakes waterways.
1866	The 1854 Reciprocity Treaty is terminated by the United States, partly as a reaction to British support for the southern states in the Civil War.
1867	The Canadian provinces formally become a confederation by the terms of the British North America Act of 1867. The U.S. Congress passes a resolution expressing concern at this development.
1871	Some minor trade liberalization is achieved between the United States and Canada as a result of the participation of Canadian Prime Minister John MacDonald in U.S.-British negotiations on a series of issues.
1874	The U.S. Senate rejects a reciprocal trade agreement with Canada.
1911	The United States and Canada agree on a new reciprocal trade arrangement. In September, the Canadian champion of the agreement, the Liberal prime minister Sir Wilfred Laurier, is defeated at the polls. This kills the agreement.
1930	The United States raises tariffs to an all-time high with the passage of the Smoot-Hawley Tariff Act.
1934	The Trade Agreements Act of 1934 becomes law in the United States, providing for reciprocal trade agreements with other nations.
1935	The United States and Canada negotiate a most-favored-nation trade agreement, which is further expanded in 1938.
1941	The Hyde Park Agreement between President Roosevelt and Prime Minister MacKenzie King leads to the Defense Production Sharing Arrangements between the United States and Canada.
1947	The General Agreement on Tariffs and Trade (GATT) is signed in Geneva by the United States, Canada and twenty-one other contracting parties.
1947-53	Canadian Prime Minister MacKenzie King decides that the time is not ripe for a free trade agreement between Canada and the United States. Prime Minister Louis St. Laurent reaches a similar conclusion in 1953.
1947-79	Trade barriers between the United States and Canada are lowered as a result of seven rounds of multilateral negotiations under the auspices of the GATT.
1965	The United States and Canada establish free trade in automotive products between the two countries under the terms of the U.S.-Canada Automotive Products Trade Agreement of 1965.
March 1985	At the "Shamrock Summit" in Quebec, President Reagan and Prime Minister Mulroney pledge to try to lower trade barriers between the two countries.

Dec. 10, 1985	President Reagan notifies Congress of his intention to enter negotiations leading to a free trade agreement between the United States and Canada.
Apr. 23, 1986	By the tie vote of ten-to-ten, the Senate Finance Committee decides to permit the negotiations with Canada to proceed under the special fast-track procedures of the 1974 Trade Act.
Oct. 3, 1987	President Reagan notifies the Congress of his intention to enter a free trade agreement with Canada.
Dec. 11, 1987	U.S. Trade Representative Clayton Yeutter forwards the text of the agreement to Congress and Prime Minister Mulroney tables the text in Parliament.
Jan. 2, 1988	President Reagan and Prime Minister Mulroney sign the agreement.

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*The principal sources for this chronology were The Canada - U.S. Free Trade Agreement Synopsis, the (Canadian) Department of External Affairs, October 1987; Philip H. Trezise,"At Last, Free Trade With Canada?", The Brookings Review, Winter 1988, Washington; and Kenneth McNaught, The Pelican History of Canada, Markhkam, Ontario, 1983.

TARIFFS

Canada protects her industries the old fashioned way: with tariffs. It has frequently been noted that Canadian tariffs are roughly twice as high as our own, 9 percent for Canada as against 4 percent for the United States. A 9 percent tariff can be quite a hurdle and in some cases a prohibitive one. Even so, it is a percentage that greatly undervalues the power of Canadian tariffs and their ability to block exports from the United States. A brief consideration of how these numbers are arrived at shows why.

In the real world, business people deal, not with a general U.S. or Canadian tariff rate, but with a series of rates on individual products on everything from shampoo to satellites. Average rates are the result of a fairly simple exercise in arithmetic. Analysts simply divide tariff revenue collected by the value of the dutiable imports into the country one is focusing on. Products kept out by high tariffs do not enter into the equation at all. The often quoted fact that 65 percent of U.S. exports to Canada enter duty free only underscores this point. If only 35 percent of U.S. exports to Canada are dutiable, and if the average duty paid on those exports is 9 percent, then it is likely that high Canadian tariffs are keeping a lot of U.S. products out of Canada.

In order to demonstrate that many of Canada's real tariff rates are at or above the 9 percent level, we conducted an extremely informal analysis. A member of the NAM staff simply flipped through the pages of the appendix to the agreement that shows current Canadian tariff rates. Here is some of what he found:

Products	**Tariff Rates** (ad valorem)
ice cream	15.5
alcohols and derivatives	10 to 12.5
certain glues	12.5
plastics	8.7 to 22.5
certain doormats	17.5
tires	10.7

surgical gloves	25
leather handbags	17.1
exercise books	11.2
woven woolen fabrics	25
printed nylon fabrics	25
certain carpets	20
terry cloth towels	25
(In clothing, the dominant rate is)	25
certain footwear	22.8
safety glass for railway vehicles	17.5
bridges and bridge sections	12.2
liquefied gas containers	10.6
covered copper wire	10.2
hydraulic turbines	15
bakery ovens	11.3
household refrigerators	12.6
gas water heaters	12.5
wooden furniture	15
certain telephone switching apparatus	17.5

The point here is not to make the case for one industry or another. These are not examples supplied by member companies and recited for political effect. They are, as I have said, simply the result of looking at the current Canadian tariff rates. Clearly Canadian tariffs are a check on potential American exports to Canada. If the FTA is ratified here and in Canada, all of these tariffs will be gone within ten years, many of them sooner. So, of course, will American tariffs on imports from Canada.

Tariffs and Investment. Let me add that Canadian tariffs and related policies, such as Canada's creative use of duty drawback schemes, have affected the nature of production in the two countries as well as the trade flows between them. Canada is not only our most important trading partner, she has also been the recipient of more U.S. investment than any other country. Many, if not most, of America's leading manufacturing companies have production facilities in Canada. That in itself is not a problem. The problem is that the facilities on both sides of the border are less efficient, less competitive, than they could be precisely because their establishment and operations have been too strongly influenced by tariffs and other governmentally-imposed market distortions.

In this connection, it may be worth recording the results of a small membership survey we did in the summer of 1986. Almost all of the respondents indicated an interest in tariffs. Ninety percent said that their companies would benefit from the elimination of all Canadian and U.S. trade barriers on their products. Further, several respondents said they believed that free trade between the United States and Canada would lead to an increase in investment in both countries.

As the members of the Committee are aware, the promised tariff reductions are scheduled to take place in three stages. Some will be eliminated as of January 1, 1989, which is the date that the FTA is to go into effect. Some will be eliminated over a five year period and some over a ten year period. In addition, however, the agreement specifically allows for the more rapid elimination of tariffs where the two countries can agree that this would be in the interest of both. We hope, and have reason to believe, that in more than one area of interest to NAM members, tariffs may actually be reduced more quickly than is called for under the timetables of the agreement.

INVESTMENT AND THE FTA

The mere fact that there is an investment provision to the FTA is in itself very significant. I cannot be certain how the members of the National Association of Manufacturers would have responded had we been forced to pass judgment on an agreement without an investment chapter. In the early days of the FTA talks, this is just the kind of agreement Canada had in mind, i.e., an agreement that did not deal with investment. As much as we value the prospect of a tariff-free border between the United States and Canada, my guess is that we would have had great difficulty supporting an agreement which was silent on investment--not with over $50 billion of U.S. investment in Canada. In some important respects, trade and investment are interdependent economic phenomena. Certain objectives, e.g., open markets, cannot be achieved in the absence of appropriate policies and appropriate disciplines in both areas. U.S. companies that operate in Canada would have found little merit in an agreement that took away the constraints of tariffs only to allow others to be added in the investment area later.

As a result of the FTA, Canadian investment policy is now formally tied to its trade policy, especially where the United States is concerned. Once the agreement is in place, it will not be possible for a Canadian government to alter its investment policies vis-a-vis U.S. companies without jeopardizing the commercial advantages Canada receives under the agreement.

Significant as this is, the agreement does more. Once it is fully implemented, there will be no discrimination in Canada against U.S. firms operating there. This is the national treatment provision. In addition, there will be no review by Investment Canada of either indirect acquisition or wholly new, greenfield plants. The threshold for review of direct acquisitions will rise from the current $5 million Canadian to $150 million Canadian, adjusted for changes in Canadian GDP. Further, though forced divestitures will still be allowed in the cultural area, the Canadian government has an obligation under the agreement to pay full market value for the asset so divested.

Are we satisfied with these changes? It depends. If the question relates to the system NAM members would like the Canadian government to adopt, the answer is no. If, however, the question is whether we see this as, not only an improvement, but the best improvement we are likely to get in the foreseeable future, the answer is yes.

ENERGY & SECURITY

More than anything else, the energy provisions of the agreement are about security, security of access to markets and security of access to supplies. Some of the members of the National Association of Manufacturers are energy producers. All NAM members are energy users. Some use fossil fuel feedstocks as inputs. Some require lubricating oil in large quantities. All are big users of electricity. Enhanced stability and security in the energy market is, therefore, in itself an important achievement of this agreement. Moreover, it is not unreasonable to expect that some segments of the U.S. manufacturing community will benefit by the development of projects made more likely by this agreement, e.g., oil and gas exploration off the coast of Newfoundland.

AUTO PACT

The changes in the auto pact that the agreement proposes are not major breakthroughs, but they are improvements. Inasmuch as there already exists a free-trade regime for this segment of U.S.-Canadian trade, it should not surprise anyone that the FTA did not accomplish more than it did in this area.

As the Committee knows, however, automotive trade accounts for roughly one-third of the movement of goods between the two countries, and it is a sector in which Canada enjoys a trade surplus. For these reasons, and because trade in automotive products is such an important component of U.S. trade generally, a comment on the accomplishments of the agreement in this sector is in order.

The United States operates the auto pact in such a way that only products of Canada are eligible for duty-free entry. The pact works differently in Canada, and it is possible that new non-North American firms could have become beneficiaries of the pact in Canada. Under the terms of the FTA, no new companies will be allowed to qualify for auto-pact status. This is a welcome development.

In addition, Canada currently operates several duty remission schemes which have the effect of encouraging exports of automotive products to the United States. These will be phased out. In our view, both of these are significant benefits, for which the U.S. negotiators should be congratulated.

The most frequently cited criticism of the FTA's automotive provisions has to do with the content requirement. Under the agreement, automobiles will be eligible for duty-free treatment in the two countries only if they contain a minimum of 50 percent North American content, i.e. 50 percent of the value of qualifying vehicles must be directly attributable to the cost of manufacturing in the United States or Canada or both. It has been argued that this content requirement should have been higher, namely 60 percent.

We agree that 60 percent would have been a better figure, because it would have encouraged more production in the United States and Canada. On the other hand, the 50-percent test should be adequate to ensure that there are no new pass-throughs of the products of third countries as a result of the agreement.

In short, Mr. Chairman, we agree that there may be merit in exploring the idea of a higher content requirement in the future. The immediate task, however, is to win acceptance for the agreement that has been negotiated, and that effort should not be jeopardized simply because the agreement does not do more. What it does in the automotive area represents a worthwhile and constructive improvement over the status quo.

DISAPPOINTMENTS

Exchange rates. As I indicated above, most of the provisions of the agreement are positive to one extent or another. That is not to say, however, that there were no disappointments. There were. Perhaps the most important was the failure of the negotiators to include a consultation provision on exchange rates. The severe exchange rate misalignments of the last 15 years contributed more than anything else to the dramatic deterioration of the U.S. trade account in the 1980s. The chart below demonstrates, I think, that this general comment holds true for U.S. trade with Canada as well. Presumably, we in the United States have learned that trade flows are strongly influenced by exchange rates and the corollary that exchange rate relationships are important.

U.S.-CANADIAN ANNUAL TRADE BALANCES AND EXCHANGE RATES, 1970-1987

	Exchange Rate ($Cdn/$U.S. - Avg. ann. rate)	U.S. Trade Balance with Canada* (U.S. bils. - U.S. imports c.i.f.)
1970	0.96	- 1.4
1971	0.99	- 1.4
1972	1.01	- 1.5
1973	1.00	- 1.2
1974	1.02	- 0.9
1975	0.98	1.3
1976	1.01	- 0.7
1977	0.94	- 1.6
1978	0.88	- 2.7
1979	0.85	- 0.6

1980	0.86	- 1.4
1981	0.83	- 2.8
1982	0.81	- 9.7
1983	0.81	-11.7
1984	0.77	-15.4
1985	0.73	-15.7
1986	0.72	-13.3
1987	0.75	-11.7

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*Bilaterally reconciled trade balance.

Sources: Census Bureau trade statistics; 1988 Economic Report of the President.

Against this background, it should have been obvious that a free trade agreement with our largest trading partner should have included a reference to exchange rates. Secretary Baker, who deserves high praise for the work he has done in the area of exchange rate policy, has explained why the agreement does not contain such a provision. He has said that exchange rate issues are more properly raised in the larger forum of the Group of Seven. We agree that the work on this subject in the Group of Seven is critical. We hope, however, that sooner or later U.S. and Canadian officials will be willing to acknowledge that there may be a need to address exchange rate issues bilaterally as well, especially between the two partners to the world's largest free-trade area.

Indeed, I believe such an informal understanding may exist today, but discussions will be undertaken by treasury ministers and not trade ministers. I hope that from time to time, perhaps annually, as Congress holds hearings to assess the implementation of the FTA, that you will invite the Secretary of the Treasury to comment on bilateral exchange rate developments.

Intellectual property rights. We had also hoped that the agreement might contain a chapter on intellectual property rights. While we are disappointed that such a chapter was not included, there are offsetting considerations. Two important U.S.-Canadian disputes over intellectual property rights issues were resolved during the period in which the FTA was being negotiated, and both countries have agreed to work together toward a meaningful GATT agreement on international treatment of intellectual property rights. We are encouraged by these developments, for in fact, in this area, a GATT agreement may be more important than a chapter in the FTA.

Subsidies. At the start of the negotiations, it had been our hope that the negotiators might have achieved new understandings on the use of subsidies and their effects on trade. In some limited respects they did, particularly in the agricultural area. In general, however, a breakthrough on subsidies was not possible in the time available. We are hopeful that the U.S. and Canadian negotiators will have more success in this area in the next five to seven year in the course of the negotiations envisaged by the agreement. Given the political sensitivity of the issues involved, both governments should realize that there will need to be an informed public debate as well as official negotiations over the issues of permissible and impermissible subsidies. If this work is undertaken in good faith on both sides, new understandings should be possible.

CONCERNS FOR THE INTERIM PERIOD

As I have indicated, Mr. Chairman, the National Association of Manufacturers believes that the implementation of the U.S.-Canadian Free Trade Agreement would significantly advance the interests of U.S. manufacturers. We believe that implementing legislation should be approved. We were very encouraged by the February 17 exchange of letters between four Congressional leaders and the appropriate Cabinet officers. The understanding embodied in this exchange would seem to ensure that Congress will have the say it should have in the drafting of the implementing legislation and further that there will be a timely vote on the final bill. Even so, we make no presumption about the outcome and see some causes for concern on the horizon.

Duty drawback. There have been indications from Canada that the Canadian government may institute a duty drawback scheme for textiles between now and June. This would have the effect of increasing the export competitiveness of Canadian apparel products made with imported textiles. As such, it could have an adverse effect on both industries in the United States. More importantly, it would suggest that the Canadian government is adopting a policy of countermeasures, an attempt to offset the effects of the agreement.

I am not suggesting that such an action by the Canadian government would bring NAM's support for the agreement into question. The agreement itself is too valuable. I am, however, suggesting that it would greatly complicate the political process in the United States and possibly jeopardize the agreement. I would like to use this occasion to urge the Canadian government to exercise restraint in this area for the sake of preserving the larger benefits promised by the FTA.

Dispute settlement. I have mentioned our disappointment at the failure to harmonize U.S. and Canadian laws in the antidumping and countervailing duty areas. I should add that, insofar as the current agreement is concerned, we are satisfied with the dispute settlement procedure that has been worked out for these areas. This does not mean, however, that we would be content to see such a dispute settlement procedure duplicated in other bilateral agreements. We would not. The special circumstances of the U.S.-Canadian relationship, the similarity of trade law in both countries, and the shared heritage of English common law and jurisprudence make this dispute settlement arrangement sui generis.

CONCLUSION

Mr. Chairman, everyone concerned with this issue recognizes that the FTA is a major political issue in Canada and a complicated one. It is not for NAM to comment on Canadian domestic politics. Our job is to ensure that you in the Congress know the views of American manufacturers on this agreement, that you know that we think it should be approved. As a practical matter, however, we want to see the agreement not only formally approved but genuinely accepted in both countries. In our opinion that is more likely to be the result in Canada if the Congress acts quickly and decisively to approve the agreement before the summer recess.

Since I have raised the issues of history and Canadian politics, I should like to close with a reference to the 1911 attempt to reach a free trade agreement between the United States and Canada. That effort was defeated at the polls in Canada with the slogan "no truck nor trade with the Yankees." In today's world, neither country can avoid trade. What we are trying to do is improve the rules governing it and the conditions under which it takes place. Canada deserves considerable credit for the intellectual and political burden her leaders have borne for the sake of these improvements.

Yet there was a thought expressed in connection with the 1911 exercise that is still relevant. It comes from President Taft's message to the Congress. Dated January 26, 1911, the message said in part:

> The guiding motive in seeking adjustment of trade relations between two countries so situated geographically should be to give play to productive forces as far as practicable, regardless of political boundaries.

We in the NAM agree, and we believe that the agreement before Congress takes a giant step in that direction. Thank you.

STATEMENT OF RICHARD W. ROBERTS, PRESIDENT, NATIONAL FOREIGN TRADE COUNCIL, INC.

Chairman **GIBBONS**. And now, Mr. Roberts.

Mr. **ROBERTS**. I am Richard Roberts, president of the National Foreign Trade Council. The membership of the council strongly endorses the United States-Canada Trade Agreement and urges that the Congress approve the agreement and enact the necessary enabling legislation.

A United States-Canada pact is needed for these reasons. First, the Canadian market is more protected than the U.S. market, so that the United States has much to gain by a reduction in the web of barriers that shelters Canadian industry from non-Canadian competition.

Second, while Canada's nationalistic economic policies are now less in evidence than during the 1970s and early 1980s an agreement which prevented the creation of new barriers would provide greater certainty for U.S. business.

Third, trade and investment disputes between the two countries, which are inevitable, given the volume of economic activity, have from time to time created periods of mutual mistrust; an agreed method for the orderly resolution of such disputes would promote a stable relationship.

Fourth, the growth of international competition has made it imperative that United States industry and Canadian industry as well increase their competitiveness, which would be enhanced by conducting operations in a larger, single market, as opposed to separate United States and Canadian markets.

The previous witnesses have already identified the principal features of the agreement, which include elimination of all tariffs over a 10-year period, reduction or elimination of nontariff barriers and dispute settlement provisions.

With respect to the economic effects, overall, most economic analyses indicate a positive impact on both countries.

As Canadian tariffs are eliminated and nontariff barriers in such areas as government procurement and standards are removed, we foresee increased U.S. exports to Canada and an enhanced capability of U.S. industry to compete in the Canadian market with Canadian and third country producers.

The competitiveness of U.S. industry will be further enhanced as companies restructure and rationalize their operations to serve a unified United States-Canada market rather than separate markets. These changes will also help U.S. industry to compete in international markets. While some Canadian industries may become more competitive in the U.S. market, we believe that the benefits of the agreement for U.S. business as a whole will greatly exceed the costs of adjustment in those sectors of U.S. industry which must adapt to increased Canadian competition.

The agreement does not accomplish everything that our negotiators and some individual components of the business community would have liked. But our assessment is that the agreement accomplishes a great deal and that an appraisal of its merits must be based on its overall benefits rather than its effects on a single sector or a particular company, industry or interest group. There are several features of the agreement which will facilitate adjustment to new conditions: First, as noted, the tariffs do not go down all at once, but there are gradual reductions extending for as long as ten years.

Second, the agreement provides for additional negotiations to address unresolved problems and unfinished business. Examples would be the section on services, which calls for further negotiations on specific sectors and the section on government procurement. There are others as well.

We recommend that the enabling legislation include appropriate directions for these additional negotiations to be commenced, including starting dates and provision for consultation with Congress as the discussions progress.

And, third, the agreement establishes a consultative body, the Canada-United States Trade Commission, to supervise the implementation of the agreement and to resolve disputes. Moreover, if there are issues which are not specifically made subject in the agreement to further negotiations, it may be appropriate and necessary for the United States to take up major basic trade or investment issues as they come along and discuss them with the Canadians. In short, this agreement is part of a process, it is not the last word.

Now, about the multilateral context of this agreement. It has important implications for our trade agreements with other countries. Some of the provisions may provide a useful model for the Uruguay round of multilateral trade negotiations. For example, the provisions in the Canadian Pact on financial services and investment should provide a basis for GATT provisions in these areas, but we would caution that only selected portions of the United States-Canada Trade Agreement can be applied in the GATT negotiations.

The services section of the Canada pact contains a sweeping grandfather clause ratifying discriminatory provisions, a concession we would not be willing to see made in developing a GATT code.

Certain provisions in the investment section of the United States-Canada trade pact would not be appropriate in the GATT context. The primary importance of the services and investment sections of the United States-Canada pact for the GATT negotiations is the demonstration that major trading nations can agree to reduce barriers and establish discipline in these areas, which up to now have scarcely been addressed by the GATT.

Some proponents of the United States-Canada Free Trade Agreement maintain that it can serve as a prototype for similar agreements between the United States and other trading partners. While it may be useful to advance this prospect as a means to stimulate action on the GATT, we would have reservations about the United States instituting negotiations for a free trade agreement with other trading partners at this time. Special relationships justify free trade agreements with Canada and Israel; but entering into additional free trade agreements with other countries could reduce emphasis on the multilateralization of world trade. Regional trading blocks seem to us to be a distinctly less desirable alternative than a world trade environment defined by a single set of principles. On the other hand, if the GATT negotiations, which have at least two years to run, end with little in the way of accomplishment, leaving multilateral discipline over trade and investment in its present state, we would at that time support a cautious, targeted program of negotiations for free trade agreements with particular countries.

In conclusion, we respectfully urge that the United States-Canada Trade Agreement be approved by Congress; it is a major step toward a more open international trading environment.

Thank you very much.

[The statement of Richard W. Roberts follows:]

STATEMENT OF RICHARD W. ROBERTS, NATIONAL FOREIGN TRADE COUNCIL

The membership of the National Foreign Trade Council strongly endorses the U.S.-Canada Free Trade Agreement and urges that Congress approve the agreement and enact the necessary enabling legislation.

In many respects, the U.S.-Canada economic relationship can already be characterized as both succesful and dynamic; the two countries are each other's largest trading partners, and cross-border trade and investment are accelerating.

- From 1980 through 1986 U.S. exports to Canada increased 36% compared with a 7.4% decline in exports to the rest of the world
- During this same period Canadian exports to the United States increased 64% compared with a 17% decline in exports to all other countries.
- And each country's direct investment in the other has increased substantially since 1980.

Why a U.S. Canada trade pact is needed

This record of growth and the necessity to compete effectively in international markets provide compelling reasons to press forward with a further liberalization of trade and investment relations between the two countries.

First, the Canadian market is more protected than the U.S. market, so that the United States has much to gain by a reduction in the web of barriers that shelters Canadian industry from non-Canadian competition;

Second, while Canada's nationalistic economic policies are now less in evidence than during the 70's and early 80's, an agreement which prevented the creation of new barriers would provide greater certainty for U.S. business;

Third, trade and investment disputes between the two countries, which are inevitable, given the volume of economic activity, have from time to time created periods of mutual mistrust; an agreed method for the orderly resolution of such disputes would promote a stable relationship;

Fourth, the growth of international competition has made it imperative that U.S. industry, and Canadian industry as well, increase their competitiveness, which would be enhanced by conducting operations in a larger, single market, as opposed to separate U.S. and Canadian markets.

The principal features of the agreement are:

- Elimination of all tariffs over a 10-year period
- Reduction or elimination of non-tariff barriers across a broad spectrum of economic activity
- Establishment of ground rules in the areas of services, investment and technology
- Liberalization of bilateral trade in agriculture, autos, energy and other sectors;
- Creation of machinery for the orderly and objective settlement of disputes

In contrast to most bilaterial trade negotiations, which address a limited set of issues, a particularly noteworthy feature of the U.S.-Canada agreement is its breadth -- covering, as it does, most of the significant economic activity between the two countries.

Economic effects

Overall, most economic analyses indicate a positive impact on both countries.

As Canadian tariffs are eliminated, and non-tariff barriers in such areas as government procurement and standards are removed, we foresee increased U.S. exports to Canada and an enhanced capability of U.S. industry to compete in the Canadian market with Canadian and third country producers. Since Canadian tariffs are higher than U.S. tariffs, U.S. exporters should benefit comparatively more than Canadian exporters from the scheduled reductions.

The competitiveness of U.S. industry will be further enhanced as companies restructure and rationalize their operations to serve a unified U.S.-Canada market rather than separate markets. These changes will also help U.S. industry to compete in international markets. While some Canadian industries may become more competitive in the U.S. market, we believe that the benefits of the agreement for U.S. business as a whole will greatly exceed the costs of adjustment in those sectors of U.S. industry which must adapt to increased Canadian competition.

Adjusting to the new rules

The agreement does not accomplish everything that our negotiators, and some individual components of the business community, would have liked. But our assessment is that the agreement accomplishes a great deal, and that an appraisal of its merits must be based on its overall benefits rather than its effects on a single sector or a particular company, industry or interest group. There are several features of the agreement which will facilitate adjustment to new conditions:

- First, while the agreement eliminates all tariffs, the reductions are gradual, extending over a period as long as 10 years to allow time for adjustment
- Second, the agreement provides for additional negotiations to address unresolved problems and unfinished business. For example:

  The section on services contains three annexes covering three sectors; architecture, tourism and telecommunications - and it specifies that additional sectoral annexes will be negotiated in the future.

  The government procurement section calls for additional negotiations to expand coverage of the section.

In order to maintain the momentum, we recommend that the enabling legislation include appropriate directions for these additional negotiations to be commenced, including starting dates and provision for consultation with Congress as the discussions progress.

- And third, the Agreement establishes a consultative body, the Canada-United States Trade Commission, to supervise the implementation of the agreement and to resolve disputes. (It also creates a select panel for the auto industry.) Moreover, even as to issues

> which are not specifically made subject to further negotiations, it may be both necessary and appropriate for the United States to institute discussions with Canada aimed at resolving trade and investment issues which affect our vital interests. In short, the agreement is part of a process, and is not the last word.

The multilateral context

The U.S.-Canada Free Trade Agreement has important implications for our trade relations with other countries. Some of the provisions may provide a useful model for treating similar issues in the Uruguay round of multilateral trade negotiations. For example, as Secretary Baker stated in testimony before this Subcommittee, the sections in the Canadian pact on services and on financial services should provide a basis for GATT provisions in these areas. Similarly, the section on investment may stimulate action in the GATT discussions on an investment code. But we would caution that only selected portions of the U.S.-Canada agreement can be applied in the GATT negotiations; for example the services section of the Canada pact contains a sweeping "grandfather" clause, ratifying some existing discriminatory provisions, a concession we would not be willing to make in developing a GATT code. Again, certain provisions in the investment section of the U.S.-Canada pact would not be at all appropriate in a GATT context. The primary importance of the services and investment sections of the U.S.-Canada pact for the GATT negotiations is the demonstration that major trading nations can agree to reduce barriers and establish discipline in these areas, which up to now have scarcely been addressed by the GATT.

Some proponents of the U.S.-Canada Free Trade Agreement maintain that it can serve as a prototype for similar agreements between the United States and other trading partners. While it may be useful to advance this prospect as a means to stimulate action in the GATT, we would have reservations about the United States instituting negotiations for a free trade agreement with other trading partners at this time. Special relationships justify free trade agreements with Canada and Israel; but entering into additional free trade agreements with other countries could reduce emphasis on the multilateralization of world trade. Regional trading blocks seem to us to be a distinctly less desirable alternative than a world trade environment defined by a single set of principles. On the other hand, if the GATT negotiations, which have at least two years to run, end with little in the way of accomplishment, leaving multilateral discipline over trade and investment in its present state, we would at that time support a cautious, targeted program of negotiations for free trade agreements with particular countries.

In conclusion, we respectfully urge that the U.S.-Canada trade agreement be approved by Congress; it is a major step toward a more open international trading environment.

STATEMENT OF ROBERT L. McNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE

Chairman GIBBONS. Mr. McNeill.

Mr. McNEILL. Thank you, Mr. Chairman.

I am here this morning to express the strong support of the Emergency Committee for American Trade for the United States-Canada Free Trade Agreement. We think it is a truly remarkable document, one that I did not think possible to be negotiated in the period of time that was available to the negotiators from both countries.

We are also delighted, Mr. Chairman, that you are initiating the legislative process by having these hearings at this early point in this session of Congress.

I was involved in negotiations of the Canada-United States auto pact back in 1965. At the conclusion of that negotiation, we sought the views of American industry as to whether or not they would like the United States to consider other initiatives with Canada in carving out sectoral free trade arrangements. There was absolutely no interest in the United States whatsoever in such a prospect, and in Canada the Canadian attitude was the same, and they had a similar reaction.

The reasons in the United States, I think, were relative indifference to Canada; in the case of Canada, they were not keen about free trade agreements because of their fear of the economic colossus to the South. In the 23-year period since the auto pact, I think it is very remarkable that points of view have changed to the point where this agreement was possible of negotiation.

I don't want to take much of your time or repeat that which has been said by my colleagues here. I would like to express, on behalf of ECAT, the hope that implementation of this agreement, which we support, will not be the end of the process of negotiations with Canada. We would hope that this agreement would be viewed as part of a continuum. There are a lot of problems we have not treated in the agreement that we hope subsequently will be.

One major area left out of the agreement is that of subsidies. This is something that really is not touched on in the agreement. While we recognize that subsidies are economically and politically sensitive, we hope that our government and the Canadian Government in the future will be willing to enter into negotiations in this very difficult area, in addition to the subsidy discussions that we are having in the Uruguay round in Geneva.

We would hope also that U.S. negotiators, together with their counterparts from Canada, in the future could improve the investment provisions of the free trade agreement. Very substantial steps have been made in the investment area in the agreement, but there are some things that are still very troublesome. For example, should an American company desire to acquire an existing Canadian company, the Canadian Government screening process would still apply if that acquisition had a value of $150 million or more.

In respect of new investments, we are delighted to see that there will be no screening of future U.S. investments no matter what the amount. But that $150 million ceiling or floor, I should say, on acquisitions will continue to be a very severe problem in our investment relations with Canada.

We also would hope that our government could go back to Canada and subsequently bring within the purview of the agreement intellectual property right protection. American industry has a very substantial problem with our Canadian colleagues in this particular area. The protection given to patents in Canada leaves a lot to be desired, as I think my colleague from Johnson & Johnson could attest to from respect of the view of the pharmaceutical industry.

We would also hope something could be done in the future, Mr. Chairman, in the area of cultural industries. This always has been and will continue to be a very sensitive political and cultural problem for the Canadians, but there are things that we think the Canadian Government should agree to, particularly in respect of the print media, that would not be harmful to them and that would be substantially beneficial to a lot of American cultural industries.

We also hope that in the future improvements could be made in the rule of origin provisions having to do with bilateral trade in automobiles. We would like to see a higher rule of origin content negotiated.

Having said these things, I don't want them in any way to be taken as expressions of dissatisfaction because we are not at all dissatisfied with the agreement. We strongly support it. But we would hope that future improvements could be made in what I consider to be this historically important agreement.

Thank you, sir.

[The statement of Robert L. McNeill follows:]

STATEMENT OF ROBERT L. McNEILL, EXECUTIVE VICE CHAIRMAN, EMERGENCY COMMITTEE FOR AMERICAN TRADE, BEFORE THE WAYS AND MEANS TRADE SUBCOMMITTEE HEARING ON THE U.S./CANADA FREE TRADE AGREEMENT

FEBRUARY 26, 1988

Mr. Chairman and members of the Ways and Means Subcommittee on Trade, thank you for this opportunity to express the support of the Emergency Committee for American Trade (ECAT) for the United States-Canada Free Trade Agreement. Our members have examined the Agreement and generally applaud its terms. Considering the time constraints of the historic negotiation of the Agreement, we are amazed at its scope and its detail. We express our appreciation and gratitude to the U.S. and Canadian negotiators for their good work and to you and your colleagues, Mr. Chairman, for the expeditious manner in which you are approaching the legislation that will be necessary to implement the U.S. obligations undertaken in the Agreement.

I was privileged to have been a senior member of the U.S. team that negotiated the U.S. Canada Auto Pact back in 1964-65. Following that momentous trade agreement with Canada, we solicited the views of other U.S. industrial sectors to see whether there was interest in similar free trade initiatives with Canada. There were none. Nor was there any evident interest in Canada for such initiatives. As a matter of fact, both the U.S. and Canadian business communities at that time viewed free trade between the two countries as something to be abhorred. The preponderant Canadian view was that the relatively inefficient -- as compared to the United States -- Canadian industrial machine would be overwhelmed by open competition with the United States. The preponderant U.S. view was relative indifference, although there was concern that some U.S. direct investments in Canada might become uneconomic if the high Canadian tariffs that often led to the investments were to be eliminated.

Much has happened since the U.S.-Canada Auto Pact. First there was the successful conclusion in 1967 of the Kennedy-Round of GATT negotiations that resulted in an average reduction of 35 percent in the tariff levels of the participating industrial nations. Tariffs were further reduced a decade later in the Tokyo Round of GATT negotiations. Also, experience under the Auto Pact dramatically demonstrated that given access to a broader market, Canadian producers could be world-class competitors.

Despite the tariff liberalization just noted and the experience under the Auto Pact, there remained and remains a strong feeling among many in Canada that open competition with the United States is too great a risk for many Canadian industries to undertake because their competitive efficiencies, based on production runs for a market one-tenth the size of the U.S. market, are far less than those of their U.S. competitors. Open competition with the United States, therefore, would be most injurious to Canadian economic interests.

As is currently most apparent, this feeling is particularly strong in the Canadian provinces of Ontario and, to a lesser extent, Quebec where the bulk of Canadian manufacture is located. The western Canadian Provinces on the other hand have historically tended to favor more open trade with the United States where they often could purchase more cheaply than from their fellow citizens in Eastern Canada and where they have huge markets for their resource-based industries.

Bearing these considerations in mind together with a history in Canada of fearing the economic colossus to its south, the U.S.-Canada

Free Trade Agreement is a remarkable achievement. Other than geographic expanse, Canada is a country about one-tenth the size of the United States as measured by population and economic output. It is a country whose manufacturing base has been established behind high tariffs and other measures of economic protection from the United States.

Canada is also a country that just like the United States and others is being swept by modern technology into a global economy in which economic isolation is technically hardly possible. Economic isolation in today's world is a prescription for relative poverty. To progress in today's world economy requires relatively free access to global resources and markets. In this respect, the size and scope of the U.S. market provides the United States with an enormous comparative advantage over most others, and particularly over Canada.

Many Canadians in positions of authority recognize that Canada's best prospect for surviving and prospering in an increasingly competitive world is to secure relatively free access to the U.S. market in order to gain the productive efficiencies of scale available to its U.S. and other world competitors. Thus the Free Trade Agreement with the United States. For Canada with its small population and productive capacities relative to those of the United States, the risks and prospects of economic adjustments would appear considerably greater than those for the United States. But for exactly the same reasons, the prospects for economic success are also great

The U.S. Canada Free Trade Agreement is not without risks for some U.S. producers as this Committee is hearing and will hear. It is interesting that public expressions from those who believe that their economic interests will be impaired are relatively few. One can only sympathize with their concerns and hope that their fears will not be realized.

There are a number of members of ECAT who have concerns with parts of the Agreement. But in no case are we aware that any of these concerns are sufficient to cause any of our members to want to oppose the Agreement. On balance, ECAT members strongly support the Agreement and urge the Congress in cooperation with the Administration to pass the necessary implementing legislation during its current session. We have in hand the negotiated instrument that will advance U.S. and Canadian economic interests and that will advance the already sound political relationship between the two countries. It would be tragic were the Agreement to fail.

Before concluding our brief statement, we would like to express the hope that the effort to bind the U.S. and Canadian economies more closely together will not stop once the Agreement is implemented. We hope that the Agreement can be built upon to improve several of the Agreement's features and to add to it new provisions.

In noting this hope, we have in mind, for example, that the Agreement does not include provisions for the protection of intellectual property rights. Although aside from the Agreement, the Canadians did approve beneficial legislation improving the protection of patent rights in Canada, the legislation itself falls short. ECAT would like to see future negotiations with Canada to add highly desired intellectual property rights provisions to the Agreement.

We would also like to see provisions added concerning certain so-called cultural industries, particularly provisions concerning the print media. Additionally, we would like to see provisions concerning the sale of U.S. beer in Canada.

We welcome the foreign investment provisions of the Agreement. They go a long way toward assuring that current Canadian investment policies will be maintained and in several vital respects substantially improved upon. However, there are objectionable Canadian restrictions on foreign investment that are "grandfathered" in the Agreement. While other restrictions are liberalized, some will still be restrictive of direct investments in Canada. An illustration of the latter is the maintenance of Canadian screening of direct investments with a value of $150 million (expressed in Canadian dollars) or more. While this compares very favorably with the current screening floor of $5 million, it will still mean that a large number of prospective U.S. direct investments will remain subject to screening. ECAT would hope that after a period of digestion of the new investment regime in Canada, there will be negotiations to improve on this and other provisions concerning foreign investment.

ECAT also welcomes the Agreement's provisions concerning the 1965 Auto Pact. We would hope that future improvements in the rule-of-origin provisions can be worked out. The rule-of-origin requirement for bilateral trade in autos in the Agreement is that in order to qualify for free trade treatment the product must contain at least 50 percent U.S.-Canadian content. Many in the auto industry would prefer a 60 percent rule-of-origin in order to avoid auto products from third countries taking advantage of the Agreement.

Mr. Chairman, these brief comments on intellectual property, investment, and rule-of-origin are in no way intended to qualify our support for the U.S. Canada Free Trade Agreement. They are intended as statements of direction that ECAT would recommend for future improvements of the Agreement. As earlier stated, we find the Agreement eminently supportable, and we strongly recommend your approval of it.

Chairman GIBBONS. Thank you, Mr. McNeill. I appreciate all of you coming here today.

My experience with the Canadians is similar to yours. I wrote a report a number of years ago about the desirability of establishing a free trade zone between the United States and Canada, and the result was I almost got invited never to go there, so I dropped all discussion of it. I have been meeting with the Canadians for about 20 years now on an annual basis, and I never brought the issue up.

I notice that the Canadian Senate, not being a politicized body like the U.S. Senate, undertook a study of the desirability from an economic point of view of establishing a freer trade arrangement, and after objective analysis by Canadians, who were not highly politicized, they came to the conclusion that it was a wise decision. Their Senate made a great contribution to the position of the political party over there, conservative party, to take this step forward. And it is a step forward, it is a brave step for Canadians. It is a small step for us, but it is a brave step for them, and I think we need to recognize that.

They are really honestly concerned about their cultural heritage and having our culture, as lousy as it is, imposed on them. Every time I watch television or read some of the garbage I read, I worry about our culture, too. But I think the Canadians are fine, strong people, they will survive the cultural shock. I don't think it will be any greater than it is anyway all the time.

Let me say, Mr. Fox, on page 9 of your testimony, if we only looked at that, there is enough in this agreement from the American point of view to buy it. Those duties are astounding.

Mr. FOX. You know, the difference, Mr. Chairman, the duties frequently cited that are the duties average about 4.5 percent, 4 to 4.5 percent, and Canada is about 9. But the method of calculation really tends to downgrade the importance of duties. Some of the duties are extremely high. Of course, trade, for trade flows, it is calculated for trade flows, so, therefore, the high duties that do restrict or prohibit trade, in effect, don't carry the weight in those numbers that one would think.

We are very much convinced that getting to zero duties will benefit our industry very much. We have members in every State, in every industrial sector, and we made a very extensive effort to find out if there were members who were opposed to the agreement and, if so, why. We didn't get any members that were opposed to the agreement. Some of them would view one aspect somewhat differently from another, but they all felt that the opportunities presented were opportunities that they could take advantage of, and the elimination of high duties is clearly such an area of opportunity.

Chairman GIBBONS. Thank you very much.

Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

Thank you, gentlemen, for your testimony. I agreed with much of what you had to say. Mr. Mullen, in your testimony, you say, "In recent years, efforts to achieve trade liberalization through traditional multilateral channels, most notably the General Agreement on Tariffs and Trade (GATT), have lost momentum."

That is so true, and that is why I felt we needed a bilateral agreement. I guess Mr. Roberts referred to that by saying let's not rush into bilaterals if we can get multilaterals. I think this bilateral has a twofold purpose, one is to build a fire under GATT and say you are not the only game in town, and if you are going to do something, do it right.

But you also seem to express concerns about investment. Mr. Roberts said this isn't bad, but let's not use it for a pattern for GATT, we don't want to get locked into this, and I agree wholeheartedly. It is one of my concerns. Should we, in implementing legislation, phase out the investment strictures, or do you not want to go that far? Should we say, "Boys, this is okay right now." As you know, it is a phase-in, it is not 150 million now, it goes up to 150 million. Should we, in implementing legislation, say you must go further than that, or do you think 150 million is fine?

Mr. Fox. Mr. Schulze, I think we have to remember the nature of the fast track, you have to vote for it or vote against it. I think the viewpoint you express is one that we find sympathy with and support. We would like to see all the investment restrictions eliminated, but I think that maybe is an objective that could best be pursued by putting a reference to that, to the reasoning in the report. I do not recommend that the agreement——

Mr. Schulze. So the answer is no, you would not see it as essential in the long run to eliminate that.

Mr. Fox. That is right. We would hope in the long run that all the investment restrictions in both countries would be eliminated, but we wouldn't amend the agreement, we work towards that——

Mr. Schulze. We are not talking about amending the agreement, we are talking about implementing legislation which is under our purview. That, it seems to me, goes along with the thrust of what we want. On one hand the panel is saying we are accepting the status quo, but on the other hand, we don't like it in the long run. You are not telling me you do like it and are willing to have that in the long run, are you?

Mr. Fox. So long as you are not jeopardizing the agreement as you proceed with your approach, I would have no difficulty with it.

Mr. Schulze. I don't think such things will jeopardize the agreement. I think they will broaden support.

Mr. Fox. They will require approval by the Canadian Government, else it would be unilateral on our part, and I don't think we should at this point take unilateral action.

Mr. Schulze. You see, I have great concerns over this last 24-hours—rush in there and get this agreement. You know, I agree somewhat. It is better than a punch in the eye maybe. It is as far as you think we could have gone, but I think we could have gone a lot further. I don't think it is a level playing field. You seem to say we are willing to be locked in there.

Mr. Fox. I don't think we are locked in there. Once we get this agreement, there will be opportunities over the years to improve it.

Mr. Schulze. But you don't want to structure that?

Mr. Fox. I assure——

Mr. Schulze. You don't want to set up something that says we do expect progress in the future.

Mr. Fox. You assure me in your question, the way you posed the question, it would not jeopardize the agreement——

Mr. Schulze. I wouldn't do it in order to jeopardize the agreement. In other words, you think if these things are done, it will help ensure ratification of the agreement, not jeopardize it?

Mr. Fox. It may assure ratification here and nonratification in Canada. I think it should be done with care, sir.

Mr. Schulze. Then reciprocity or symmetrical access is not a concern of yours?

Mr. Fox. Canada is a smaller country than we are.

Mr. Schulze. So is Israel and anybody else that we are going to deal with. This is a big world, and we happen to be a large player.

Mr. Fox. Not to appear argumentative——

Mr. Schulze. That is what we do, in multilateral negotiations and agreements, we bring our processes down to the lowest common denominator. Sooner or later, look at the history of trade negotiations over the last 40 years, we have done that. We have deliberately made sacrifices in order to help lesser developed nations. I don't disagree with that. I think there are places we should, but sooner or later, when we are dealing with people who are relatively sophisticated, we shouldn't treat them as third-world backward countries. We should say, you are a full trading partner, and let's deal on an equitable basis, and I am concerned we don't do that.

Mr. Fox. Sir, I think I would agree with you 100 percent on the subject of substantive reciprocity. There are asymmetries in the agreement, the asymmetries come from a number of considerations, but particularly Canada's concerns about being the smaller partner in this free trade area. I think we should move in the direction you state but I wouldn't try to get there at a pace that would destroy the possibility of an agreement.

Mr. Schulze. Anyone else——

Mr. McNeill. If I could add, the negotiating history in respect of this $150 million figure, I think, would indicate that it would be enormously difficult to up that figure at this particular point in time.

The current floor, as you know, is $5 million, and the Treasury Department negotiators have informed us that at a $5 million level, approximately 5,000 to 7,000 separate prospective U.S.-direct acquisitions in Canada are subject to the screening process whereas at the $150 million ceiling, which will be phased in, I think by 1992 or 1993, they estimate that the number of prospective investments that will be screened will be in the neighborhood of 400 to 500, so there is statistically an important step forward.

Mr. Schulze. What did you get for that?

Instead of saying isn't that marvelous, they are restricting our investment in Canada. It is now $5 million. It will be $50 million, $100 million, and $150 million, but during that period, our investment is restricted and it is not reciprocated.

All I am saying is from a negotiating standpoint, we would have been happy to negotiate it—fine, we will do that, but here is what we are going to extract for that concession.

Mr. McNeill. Another part of the package on investment is that the Canadians have bound themselves in the investment provisions of the agreement not to revisit the kinds of institutions the Canadians have used, such as FIRA, the Foreign Investment Review Administration. The U.S. negotiators were able, if you will, to thereby lock in the current investment policies of the Mulroney government, which are policies that historically are perhaps as favorable as we have had in Canada.

The second very important thing to remember is that the $150 million figure or the current $5 million figure is in respect of acquisitions of existing Canadian firms.

In respect of nonacquisitions, the agreement provides for no limits for screening whatsoever, and I think that is a substantial step forward——

Mr. SCHULZE. What kind of limits or screenings are there for Canadians investing now in the United States or making acquisitions?

Mr. MCNEILL. I will provide you with a document that I just ran across this week. It is a compilation of restrictions on foreign investments in host countries who are members of the OECD. I was rather surprised to find that of the 20 or 21 members, the Atlantic nations plus Canada, Japan and ourselves, I think that France, Australia and the United States had restrictions that it took several pages to list, whereas with respect to West Germany and other countries, including Canada, the listings are very small.

Mr. SCHULZE. If you take a $5 million limit——

Mr. MCNEILL. This is not a limit.

Mr. SCHULZE. That is just one item that covers a multitude, you could list 100 pages. I think we are in somewhat agreement, I am just disappointed that we did not go further and faster.

I think the long-range aim and goal is extremely beneficial, but I am disappointed that we didn't get more in these negotiations.

Thank you, Mr. Chairman.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you very much, Mr. Chairman. Gentlemen, I appreciate the testimony. I think it has been very helpful.

I would like to ask a series of questions.

Mr. Mullen, you mentioned in your testimony that 92 percent of your members of the U.S. Chamber are small businesses defined as how many employees?

Mr. MULLEN. Under 100.

Mr. PEASE. I am curious to know what percentage of your board of directors comes from businesses of fewer than 100 employees?

Mr. MULLEN. I can't give you that figure today. There is significant representation among the board of directors of the chamber of small businesses.

Mr. PEASE. Please send a letter to me in my office.

[The following was subsequently received:]

U.S. Chamber of Commerce

1615 H Street, N.W.
Washington, D.C. 20062
202/463-5460

International Division

March 10, 1988

The Honorable Donald J. Pease
1127 Longworth House Office Building
Washington, DC 20515

Dear Congressman Pease:

In response to your question at the February 26 hearings on the Canada-U.S. Free Trade Agreement (FTA), I am pleased to provide the information you requested regarding the small business representation of the U.S. Chamber of Commerce.

o There are 59 members on the Board of Directors, 10 of whom are from small business.

o 72% of the Chamber's dues come from small business (100 employees or less).

o The formal small business input to the Chamber's policy process is provided by the 66-member Small Business Council, chaired by Frances Shaine of SPM Manufacturing Corporation, Holyoke, Massachusetts. The Board has never rejected a recommendation from the Small Business Council.

o The Small Business Council was the only Chamber committee, apart from the International Policy Committee, to take a formal position on the FTA. The support of these two committees was the basis of the Board's endorsement of the FTA on February 10.

o Two of the last four chairmen of the Chamber's Board have been from small business (Frank L. Morsani, President, Precision Enterprises, Inc., Tampa, Florida and Van P. Smith, Chairman and President, Ontario Corporation, Muncie, Indiana).

It was a pleasure to testify before the Trade Subcommittee of the Ways and Means Committee on the Canada-U.S. Free Trade Agreement and I hope we can count on your support.

Sincerely,

Jack

John R. Mullen
Vice President, Corporate Relations
Johnson & Johnson

Telex: RCA 248302 (Int'l) TWX 710 822 9382 (Domestic) Cable COCUSA

Mr. **Pease**. What is the position of the chamber—you probably don't have a formal position—but the disposition of the chamber relating to President Reagan's suggestion that if we approve this United States-Canada Free Trade Arrangement, we ought to move to include Mexico next?

Mr. **Mullen**. I would think that most Americans would hope that eventually we would see greater opportunities for trade and investment between Mexico and the United States.

Mexico and Canada are very different countries indeed, and the significant economic problems that prevail in Mexico do not prevail in Canada and so the opportunities for the trade and investment arrangement that has been negotiated between the United States and Canada does not presently prevail in Mexico.

It may be some time in the future before we see that.

I think the President's hope is probably the hope of all Americans.

Mr. **Pease**. Mr. Roberts, you expressed reluctance to extend the idea of the free trade pact to other nations, saying you prefer going the route of GATT.

What is your feeling about including Mexico in this North American arrangement?

Mr. **Roberts**. I would recommend that we wait and see how the GATT negotiations go. If they are eminently successful that will accomplish a good deal of what we want to accomplish.

Mexico recently joined the GATT and is now accommodating itself to those standards.

To have a free trade agreement with Mexico similar to the Canadian agreement would require major changes in policies of long standing in Mexico.

They simply have a different view about foreign investment in particular than we do and it would be, I think, a negotiation that would take years and possibly a change of thinking of Mexico of a major kind in order to enable such an agreement to take place.

Mr. **Pease**. Mr. Roberts, as long as you have the floor, let me ask you a couple of other questions.

Can you tell me a little more about your organization, the National Foreign Trade Council?

Mr. **Roberts**. Yes.

We have about 500 members who are engaged in international trade and investment scattered all through the United States.

Mr. **Pease**. Are they mainly corporate members?

Mr. **Roberts**. Entirely corporate members, yes.

Mr. **Pease**. You indicated that you—if this agreement is approved—foresee greater exports to Canada.

Do you see the opposite? Do you also foresee greater exports from Canada to the United States and what kind of a ratio do you see between those two?

Mr. **Roberts**. Well, because the U.S. market is nine times the size of the Canadian market, as I understand it, probably the volume relatively speaking, would be greater on the Canadian side coming down here, which is to say they would increase proportionately more than we would, so I think there will be an increase both ways.

I don't have specific numbers on how that will go.

Mr. PEASE. Do you think it is fair to say that probably in terms of goods, the advantage of this agreement would go to the Canadians, as in relation to investment, the advantage may go to the United States?

Mr. ROBERTS. I think that is true in part, but on the other hand, as Mr. Fox pointed out, the Canadian tariffs are high—they are much higher than the U.S. tariffs and, therefore, if these tariffs are eliminated, there will be areas in which our exports to Canada should increase handsomely.

Mr. PEASE. I see.

You indicate in your testimony that the competitiveness of U.S. industry will be further enhanced as companies restructure and rationalize their operations to serve a unified United States-Canadian market rather than separate markets.

If Mr. Oswald were still here, I am sure he would look at the word "rationalize and restructure" and say, "That looks like plant closings to me."

I presume if the U.S. industry is going to do that, chances are that the rationalization will be in terms of greater investment in Canada, because of the exchange rate differential, it will probably be cheaper to produce there than in the United States.

Do you see a significant movement of U.S. firms to rationalize their businesses by creating more investment and more jobs in Canada rather than the United States?

Mr. ROBERTS. I would like to hear from my colleagues on this one also because it goes right to the heart of what we are about here and is a very complicated question.

Each company now doing business with Canada will have to assess its relationship: Does it have plants there or here? Where is the best place to make changes if changes are required?

It is hard to say without analyzing each individual business and U.S. industry is studying this now. One thing to be said is if a U.S. company has previously had a large facility in Canada that it put there because of the tariff barriers that now exist, it might well decide that it did not necessarily need to have that plant in Canada, it might decide to source its production in the United States which would result in an increase in jobs here and a decrease of jobs there, so there are so many permutations and combinations, it is difficult to predict.

In a larger market, companies on both sides of the border are going to see how they can produce more efficiently and economically in this larger market and that should produce efficiencies in the long run, though some pain in the short run.

Mr. PEASE. Does anybody else want to comment?

Mr. MCNEILL. Could I give an anecdotal answer?

In 1965 when we sat before this committee and the committee approved the implementing legislation for the Canada-United States auto pact, we invited American industry to give us their views as to whether or not they would like similar free trade initiatives to be undertaken by the then Johnson administration. What we learned was that many American industries informed us of what Mr. Roberts just said, that is, that high Canadian tariffs that at that time were at an average of 20 to 25 percent compared to the current averages of 10 to 12 percent—that it was because of those high tariffs that direct investments in Canada became economical, because the efficiences of scale and the size of the Canadian market were not such to economically justify those investments in absence of the tariffs.

So I would think your question would be a keener question in Canada than here, because they are lowering their tariffs higher than ours to zero. Our efficiencies of scale and production here, I think, on an average, are more efficient than in Canada.

So it is going to take a long time for things to even out, but I would be very surprised, based on my experience, to see American companies closing plants here and going up there.

I shared a panel in Canada with a Canadian Senator before the Canadian Chamber of Commerce advocating free trade between our countries. We were both laughed out of the room. That wasn't long ago.

But I think that if I were looking at it from your perspective, I would not be as worried about your question as if you were a Canadian parliamentarian.

Mr. Fox. Mr. Pease, there is a tremendous amount of improvement in productivity, quality control, marketing, product design, all the things that industry should be doing to take advantage of markets.

I have no doubt that under this agreement our exports to Canada will advance considerably above the rate that they would have been without the agreement.

I think we should also remember that some new markets are going to be created in Canada, and the United States having a free trade area means we are going to displace some imports from third countries; some things now imported from Europe to Canada or the United States will be manufactured in North America.

I don't believe the current state of economic analysis could give you very satisfactory estimates of those gains for either country, but I think from the conversations that I have had with American business leaders in the NAM groups concerned with this issue, there is a great deal of confidence among them that our exports to Canada will increase materially as a result of the agreement.

Mr. Pease. Thank you, Mr. Fox.

Let me make it clear that I agree with the basic premise of the agreement, that in the long run competitiveness will be improved, productivity, and everybody will be better off.

Certainly, as Mr. Gibbons stated earlier, if our forefathers had not eliminated any possibility of tariffs among the states, we would not be the economic power that we are today.

To get to the long run we have to go through the short run, and I am interested in examining the likely effects in the short run. The comments you have made are helpful to me in illuminating that.

Mr. Roberts, you also say that you believe that the benefits of the agreement for U.S. business as a whole will greatly exceed the costs of adjustment in those sectors of U.S. industry which must adapt to increased Canadian competition.

I am interested in the cost of adjustment—a lot of the people who have to adjust are not only corporations, but the workers who work for those corporations. One problem I have had with my friends in NAM and the Chamber of Commerce in the past in my service on the Unemployment Compensation Subcommittee is that they are much more sanguine about who is going to bear the burden of costs of adjustment.

Do you have any idea how, if at all, we are to provide for the adjustment of workers who lose their jobs to Canadian competition?

Mr. ROBERTS. We have in place, of course, a number of programs to take care of workers who have lost their jobs. I do not know whether it is advisable to institute a separate program to take care of this new situation.

I would suggest that it may not be necessary because it is, in the long run, a job-creating agreement, which is to say if I and my colleagues are right and if the economic studies that we have seen so far are right, there will be gradually more jobs than there are now.

The question remains what special help needs to be given to those whose jobs may have been lost in this process.

We have a very dynamic economy and I question whether we need to make special provisions for this kind of a situation. To me this is perhaps akin to a significant technological improvement which may make certain industries fall by the wayside and new industries spring up, workers go from one to the other or are absorbed into the new industry and lose out in the old industry. But this is a circumstance that takes place all the time in our economy.

Mr. PEASE. I keep hearing you say "in the long run" and "gradually," and I gather that you don't think—nor do I—that any specific arrangement needs to be made for workers in relation to this pact.

I do have some questions about the adequacy of our general statutes for helping displaced workers. We will argue that out on another day in another subcommittee.

Mr. McNeill, I was interested to hear that you helped negotiate the United States-Canada auto pact—in 1965, did you say?

Mr. MCNEILL. We negotiated it in 1964. The implementing bill was passed in 1965.

Mr. PEASE. I was in Canada, with the auto workers in Canada last summer, and they were adamant that there not be any change in the North American auto pact, which led me to believe that they felt the existing pact is very beneficial to the Canadians, which leads me further to think maybe it is not so beneficial to the United States. I am disturbed that we have been unable to do more in this arrangement to look at trade in automobiles, which is the largest trade between the two nations.

I am interested in the origin requirement. We had hoped to get it up to 60 percent. Our negotiators could not get it past 50 percent.

You indicated in your testimony that you thought an unfinished piece of business was to get that preferential rate higher than 50 percent. I couldn't agree with you more. I just think that is a major flaw in this current agreement, that we open up the possibility of allowing Japanese or Korean companies to set up assembly plants in Canada and supply half of the contents, the engines, the drive trains, and then have those autos come into the United States without any duty.

Do you think there is anything we can do at this late date to try to make a change?

Mr. McNeill. I would only add by noting that the 50 percent rule of origin has been substantially improved over what it was in the auto pact itself.

The definition of the rule of origin in the free trade agreement is 50 percent of direct manufacturing cost, which is more than labor and material but not nearly as much as the current "value added" test in the rule of origin under the Canadian auto pact.

I have been told by two of my member companies, General Motors and Ford, that the effect of the new rule of origin is to raise the content, if you will, from 50 percent in the case of one of those companies up toward 70 percent, and in the other company between 60 and 65 percent, so that even though the 50 percent stays the same, the component things going into the definition have been improved so there is a tougher rule of origin.

We would like to have seen a higher rule, and I would hope that this is something that our negotiators in a future administration will revisit the Canadians within the future with the hope of trying to get that up.

Mr. Pease. Thank you.

One thing that concerns me in relation to autos and generally is that we have identified a lot of loose ends that could be improved from our point of view in future negotiations, so if we are going to go to the Canadians and say we would like you to do this and this, that we have left on the table in 1987, they will say that is fine, what are we going to get for that. I guess I am not so sure I know what we will have to give up in exchange for concessions that we hope to have them make.

Do you have any notion of what it is that they could still get out of us? It looks like we have given them about everything they want.

Mr. McNeill. I don't have an answer to that, Mr. Pease. I wish I were bright enough mentally to quickly come up with an appropriate answer. I can't.

We remain a substantial market. I am sure that we have things in the area of procurement and other areas that are of keen interest and will remain of keen interest to the Canadians.

I cannot conceive that economic circumstances are going to be static between our two countries and I would imagine, for reasons of geographic proximity and the interrelationship of our subsidiary relationships, that there will be a continuing negotiation.

I can't imagine a situation in which this is the end, that there is nothing that we have to give.

Mr. Pease. Thank you very much.

Chairman Gibbons. Mr. McNeill, you said in your testimony that you had come across something in your readings about restrictions on investment. If it is not too bulky, I would appreciate you sending me a copy.

Mr. McNeill. I will send you a copy this afternoon, sir. It is a compilation just put together.

Chairman Gibbons. Make sure it gets to me and doesn't just arrive in my office.

Thank you very much. We appreciate the panel coming.

[Portions of the study follow:]

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CONTROLS AND IMPEDIMENTS AFFECTING INWARD DIRECT INVESTMENT

IN OECD MEMBER COUNTRIES

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

I. INTRODUCTION

A. GENERAL FRAMEWORK OF THE STUDY

The OECD countries agreed when the Organisation was established in 1960 that the free international movement of private capital flows is generally a desirable objective in that such capital movements promote a more efficient utilisation of available economic resources. The OECD's Convention thus states that Members will "pursue their efforts to extend the liberalisation of capital movements", and this principle was embodied in 1961 in a legal instrument, the Code of Liberalisation of Capital Movements (hereafter called "the Code") to which all Member countries adhere. One of the most important capital movements covered by the Code is direct investment, which is defined as "investment for the purpose of establishing lasting economic relations with an undertaking such as, in particular, investments which give the possibility of exercising an effective influence on the management thereof".

OECD's Committee on Capital Movements and Invisible Transactions (hereafter called "the Committee"), composed of independent experts nominated by Member countries, has been entrusted with surveillance of the application of the Code. This task includes, in particular, undertaking periodic reviews of the restrictive measures Member countries maintain with respect to their liberalisation obligations, examining the justifications of the restrictive measures in question in light of changing circumstances (e.g. the economic and financial positions of the countries) and, where appropriate, recommending that certain measures be relaxed or dropped.

While information on most of these measures is in the public domain, it is often scattered in many places due to the diversity of government agencies involved in most cases. The Committee therefore determined that, in the interests of increased transparency and international co-operation, it would be highly desirable to develop systematically a comprehensive and accurate picture of the various laws, regulations and administrative practices which affect the ability of non-residents to undertake direct investments in Member countries. Such a picture was prepared and published in 1982[1] through a survey prepared by the Member governments. It represented an updating and supplement to the information on inward investment measures in the Committee's previous study on direct investment policies, procedures and practices published in 1979[2].

In 1982 the Council of the OECD at Ministerial level requested the Committee on Capital Movements and Invisible Transactions and the Committee on International Investment and Multinational Enterprises to review the various OECD instruments concerning direct investment in order to fill possible gaps in these instruments, to strengthen international co-operation in this field and facilitate international investment flows. Work carried out in the Committee on International Investment and Multinational Enterprises led to the strengthening of the examination procedure of measures in force in Member countries which constitute exceptions to the principle of National Treatment, according to which a multinational enterprise should, under similar circumstances, enjoy the same treatment as domestic enterprises. Moreover, a survey of such measures was carried out and its results published in 1985[3].

The Committee on Capital Movements and Invisible Transactions, for its part, pursued its efforts towards extending the scope of application of the Code in the field of direct investment. Until 1984, the liberalisation obligations of the Code only required Member countries to authorise automatically transactions and transfers involving international direct investment to or from other OECD countries and to allow the proceeds of liquidation to be re-transferred. It was unclear to what extent this obligation included the capacity of the investor to put the undertaking corresponding to the investment into operation in the host country. In order to make liberalisation effective, and so that the right to invest in a given sector should not be purely formal or financial but should allow effective access for the operation of the enterprise in that sector, the Committee, concluding a further stage of its work, agreed that all measures or practices in a given country which, under the laws and regulations of that country, prevent or significantly impede non-resident investors from having the opportunity of entering and appropriately operating a firm in a particular sector should be considered as obstacles insofar as they do not equally apply to resident investors. Accordingly, a new remark was added to item I/A of the Code which provides that:

> "The authorities of Members shall not maintain or introduce :
>
> Regulations or practices applying to the granting of licences, concessions, or similar authorisations, including conditions or requirements attaching to such authorisations and affecting the operations of enterprises, that raise special barriers or limitations with respect to non-resident (as compared to resident) investors, and that have the intent or the effect of preventing or significantly impeding inward direct investment by non-residents."

In view of these extended obligations, most Member countries found it necessary to modify their position with regard to the Code, that is, to lodge a new reservation or to amend an existing one. These modified positions took effect in July 1986 and are reflected in the present report.

In examining Member country positions in regard to the extended obligations of the Code in the area of inward direct investment and establishment, the Committee made a number of clarifications concerning the scope of these liberalisation obligations. In particular, the Committee commented on the appropriate treatment of measures and practices concerning reciprocity and/or involving discrimination among investors originating in various OECD Member countries (other than the exceptions to the principle of non-discrimination permitted by the Code in the context of special customs or monetary systems). The Committee took the view that, while the status of such measures and practices should be considered to be different from that of restrictions that can be covered by reservations, the procedures to deal with them should be those applying to measures underlying Member country reservations, including the process of periodic examination by the Committee. A Decision to this effect was adopted on 16th July 1986. This Decision contains, *inter alia*, a list of the measures and practices of this nature that were, as required, notified by the Member countries as of the date of the Decision, and reproduced in the Code under the heading "Annex E". A description of these measures and practices can also be found in the text and tables of the present study.

The Committee noted, moreover, that in certain countries measures restricting inward direct investment and establishment were taken by authorities other than those of the central or federal government, i.e. by the authorities of States, provinces, regions, autonomous units, etc. The Committee believed that each Member government should inform the Organisation of such measures to the extent that it has or acquires knowledge of them. A description of these measures can be found in the present study.

Accordingly, the present study not only updates the information in the 1982 publication on the basis of a further survey but also describes the situation of Member countries in the new fields of application of the Code and indicates measures taken by authorities other than those of central or federal governments. The information provided by the updated study is thus more complete and detailed than that contained in the previous one; this, rather than any change in government policies, explains why the measures reported here are more numerous than those in the previous report. In fact, the evolution of most Member countries' policies has been towards reducing the scope or eliminating a significant number of measures, as well a simplifying existing authorisation procedures, thus contributing to the objective of liberalising inwar direct investment to an important extent. This evolution has been particularly significant in the bankin and related financial services sectors.

B. SCOPE OF THE SURVEY

The detailed information provided by the survey, describing the situation as of August 1986, i presented on a country-by-country basis in four tables annexed to this report. This information concern not only measures and practices that are regarded as restrictions in the sense of the Code, but also oth measures that may affect the ability of non-residents to undertake direct investments in Member countrie *Table 1* provides a list of controls and impediments of a general nature, that is, measures that do not refer specific sectors. Where applicable, a brief description of existing authorisation procedures for inward dire investment is also given. *Table 2* lists restrictions on local financing of inward direct investment and th concerns either conditions relating to the access of non-resident investors to domestic capital markets specific requirements for direct investments to be financed through capital imported from abroad. *Table* lists controls and impediments to inward direct investment that apply to specific sectors, includin measures concerning reciprocity and/or involving discrimination among investors originating in vario OECD Member countries (other than the exceptions to the principle of non-discrimination permitted the Code in the context of special customs or monetary systems), and measures motivated by public ord and security considerations. Table 3 therefore includes all kinds of impediments that non-residents ma encounter in seeking to invest and carry out business activities in industries subject to regulation Member countries. To provide a complete picture, the table indicates the sectors in which public, private mixed monopolies are maintained. *Table 4* recapitulates in a synoptic manner all sectoral controls ar impediments to inward direct investment as listed in Table 3.

In order to understand better the classification of information within the four tables, son comments on the scope of the Code's liberalisation obligations with respect to inward direct investme should be made. The Code, of course, does not entitle a non-resident to engage in an economic activi without compliance with the general regulations of the governments concerned. In addition, the Code do not confer on non-residents a claim to preferential treatment over residents. For similar reasons, this surv excludes concession or licence requirements and regulations applying to the modality of operations whi use the *same* standards for or apply equally to resident and non-resident investors. Rather, the surv examines those concession or licensing requirements or regulations applying to the modalities of operatio which specifically raise special barriers or limitations to the access of *non-resident investors* (as compar with resident investors) to the establishment and operation of business enterprises in specific secto Moreover, the liberalisation obligations of the Code do not encompass measures taken for the protection essential security interests or public order and which restrict foreign investment in certain sectors[4]. T liberalisation obligations of the Code similarly are not breached by measures preventing an investme when, in the view of the Member government concerned, that investment would have an exceptiona detrimental effect on the interests of the Member country concerned[5]. In both cases the interpretation the applicability of relevant exceptions in the Code are left to the judgement of the Member coun concerned provided these are not considered excessive, but in the case of the latter exception, Organisation is to be notified of each instance where an envisaged investment is refused on this ba Finally, as indicated above, measures and practices concerning inward direct investment and establi ment and involving reciprocity and/or discrimination are to be notified and examined, but are not to covered by reservations to the Code.

Preceding the four tables set out below is a commentary based on an analysis of these tables. The commentary is presented in Part II of this report and discusses the tables in three sections. Section A deals with authorisation procedures and other regulations of a general nature concerning inward direct investment. Section B provides a survey of sector-specific controls and obstacles which are not the result of the existence of monopolies (whether public, private or mixed); the latter are examined in section C.

II. OVERVIEW OF SURVEY RESULTS

A. AUTHORISATION PROCEDURE AND OTHER REGULATIONS OF A GENERAL NATURE

The situation in OECD countries varies extensively regarding authorisation procedures for foreign direct investment. Authorisation may be required for all or only certain kinds of investment, and the degree of restrictiveness differs from country to country. In a few countries authorisation procedures are used as part of an active foreign investment policy while for most other countries they are mainly for information and verification purposes.

In a first group of countries: (*Belgium*, *Denmark*, *Germany*, *Greece*, *Italy*, *Japan*, *Luxembourg*, the *Netherlands*, *Switzerland*, the *United Kingdom* and the *United States*), prior authorisation is required in a limited number of instances, mainly in those sectors which are subject to special conditions (see section B below). In a second group of countries (*Australia*, *Austria*, *Canada*, *France*, and *Spain*), prior authorisation is more prevalent as, in addition to the sectors listed in section B below, it may concern other types of foreign investment. In *Australia*, this is the case with all proposals, irrespective of size, falling within the scope of the Foreign Takeovers Act 1975 (including proposals for the acquisitions of businesses by the purchase of shares or assets) and proposals to establish new businesses where the total amount of investment is A$10 million or more. In *Austria* prior authorisation is required for foreign investment in the form of loans. In *Canada*, prior authorisation is necessary for foreign takeovers of Canadian businesses with assets of C$5 million or more in the case of direct acquisitions, all indirect acquisitions of Canadian businesses with assets of C$50 million or more, indirect acquisitions of businesses with assets between C$5 million and C$50 million which represent more than 50 per cent of the value of the total international transaction, and foreign investment in designated culturally sensitive sectors. In *France*, prior authorisation is required for foreign participation by non-EC investors above FF 10 million. In *Spain*, authorisation is required for investment by governments, official institutions and public enterprises.

In six countries (*Finland*, *Ireland*, *New Zealand*, *Norway*, *Sweden* and *Turkey*) all foreign investments are subject to prior authorisation (see Table 1). The degree of restrictiveness of this procedure varies, however, from country to country. For instance, in *Finland*, authorisation is granted provided that the direct investment falls outside restricted sectors (see section B below). In *Ireland*, approval is readily granted where investment is shown to be genuine inward direct investment. In *New Zealand*, approval is generally given for the acquisition of whole ownership or control of firms when the amount of investment involved is less than NZ$500 000, and approval is automatically granted for the acquisition of shareholdings of less than 25 per cent. In *Turkey*, authorisation is readily granted for investments of at least US$50 000 and no more than US$50 million, unless the investment is in a restricted sector.

Prior authorisation is required for all investment by established foreign-controlled (EFC) enterprises in *New Zealand* and *Turkey*. In other countries (*Austria*, *Denmark*, *Germany*, *Greece*, *Ireland*, *Italy*, *Japan*, *Switzerland*, the *United Kingdom* and the *United States*), prior authorisation is required only for investment by EFC enterprises in sectors subject to special conditions (see Table 3). In all other countries (*Australia, Belgium, Canada, Finland, France, Luxembourg,* the *Netherlands, Norway, Portugal, Spain, Sweden*) the same authorisation procedure applies to foreign investment and investment by EFC enterprises with one exception: in *France*, authorisation is not required for investments by EFC enterprises through loans and subsidies to enterprises they already control, nor for investments taking the form of an increase in equity capital or the acquisition of shares where the foreign investor already controls more than 50 per cent of the equity capital.

Restrictions on local financing of inward direct investment, while also of a general nature, have been drawn together and listed in Table 2, giving restrictions on the local financing of a new foreign-controlled enterprise. The following general observations can be made about this table. There is a sizeable group of Member countries, among them some of the largest recipients (as well as originators) of international direct investment, which do not distinguish between resident and non-resident investors when it comes to raising funds in the domestic capital markets (*Australia, Canada, Germany, Japan, Luxembourg, New Zealand, Turkey,* the *United Kingdom* and the *United States*). However, a large number of Member countries restrict the access to the local capital market of non-residents for the purpose of direct investment in their territories or in a way that may affect the financing of direct investment in their territories (*Austria, Belgium, Denmark, Finland, France, Greece, Ireland, Italy, Norway, Spain* and *Sweden*). The degree of restrictive effect varies substantially between these countries, and several maintain a foreign financing requirement (*France, Ireland* and *Sweden*).

Finally, it is to be noted that the Treaty of Rome prohibits any discriminatory treatment based on nationality between EC Member countries in establishment matters. In addition, in order to facilitate the free exercise of the right of establishment, directives have been adopted in many sectors (in particular banking and insurance) with the aim of harmonizing national regulations on market access.

B. SECTORAL CONTROLS AND IMPEDIMENTS

Controls and impediments to inward direct investment of a sectoral nature involve a wide variety of industries, and most frequently those in the service sectors, in particular, banking, insurance, broadcasting, communication services, air, land and maritime transport, as well as the natural resources and energy sectors (see Table 3). The controls and impediments which are surveyed in this section are those which do not result from the existence of monopolies (whether public, private or mixed) which are examined in the next section. The controls and obstacles examined below may be such that certain sectors are largely closed to foreign investment. In some cases, access is subject to an authorisation or a concession to be granted on a case-by-case basis. In other cases, restrictions are limited, for instance, to foreign participation in the capital of enterprises. Sometimes access is available only when international agreements exist between the country concerned and the country of origin of the investor, or on the basis of reciprocity. Also, approval of legal establishment is sometimes subject to conditions specific to foreign investors or involving criteria specific to foreign investors. Finally, some sectoral restrictions are applied by sub-territorial units rather than, or in addition to, those enforced at the government level.

Certain sectors or activities are largely closed to foreigners or established foreign-controlled enterprises. For instance, restrictions are very prevalent in domestic air transport and maritime transport. Domestic air transport is largely closed to foreign investment in many countries such as *Canada, Finland, Ireland, Japan, Luxembourg,* the *Netherlands, Sweden, Switzerland,* the *United Kingdom* and the *United States*. Maritime transport as well as other maritime operations are also restricted in the sense that some activities are generally reserved to national built and registered vessels or vessels flying the national flag; this is the case for instance of cabotage in *France, Greece, Japan, Turkey,* and the *United States*; offshore supply in *Canada, France, Greece, Spain* and the *United States*; the transportation (other than cabotage) of persons or of some or all goods in *France* and *Spain*; dredging and salvaging in the *United States* and fishing in *Ireland*. Authorisation to fly the national flag of *Switzerland* is reserved to Swiss nationals.

Certain other sectors are also largely closed to foreign investment, but these restrictions are much less widespread amongst countries than the preceding ones. This is the case for banking in *Australia* (for full banking licences), *Finland*, *Norway* and *Sweden* (for branches); armaments in *Denmark*, *Finland*, *France* and *Spain*; flour milling in *Ireland*; mass circulation newspapers in *Australia*; radio and television broadcasting in *Australia*, *Canada*, *Japan*, *Spain* and the *United States*; film industries in *France* and *Switzerland*; agricultural products in *Finland* and agriculture, forestry and fisheries in *Japan*; leather goods and leather products manufacturing and oil in *Japan*; petroleum exploration and exploitation in *Turkey*.

Often foreign investment must receive special authorisation which may be granted only on a case-by-case basis. This is the case for air transport, maritime transport and newspapers in *Australia*; air transport in *Germany*; banking in *New Zealand*; banking and the cinema in *Portugal* and a number of sectors in *Finland* and *France*. In *Finland*, a strict authorisation procedure applies to foreign investment in the following sectors: trade in securities, holding, leasing and factoring, debt collecting, credit information, auditing, estate agencies, publishing, employment agencies, accommodation and catering services, security services. In *France*, the sectors involved are petroleum, nuclear industry, schooling, production, distribution and exploitation of films. In *Turkey*, a special authorisation procedure prevails for foreign investment in banking, insurance, mining and petroleum.

Another means of regulating foreign investment is to require that a concession be obtained in order to engage in certain activities. This system, which generally involves the evaluation of investment proposals on a case-by-case basis, is prevalent in *Denmark*, *France*, *Norway* and *Switzerland*. In *Denmark* the following sectors are subject to concession: transport by rail and bus; civil domestic aviation; telephone service; production and distribution of electricity and gas; extraction and distribution of natural gas and water; and exploration and exploitation of oil. In *France*, foreign investment in the following sectors is subject to a concession requirement (or authorisation in some instances): exploitation of mines, quarries and waterfalls; social and health sector; travel and tourism associations; audiovisual communication enterprises (private television, private local radio, cable networks). In *Norway*, a concession is required for the establishment of banks and finance companies; for the acquisition of fishing vessels or shares in a company which owns such vessels; to operate air transport companies. The concession regime applies in *Switzerland* for air transport; transmission of liquid or gaseous fuels; extraction of hydrocarbon and gas; use of water power. Finally, in *Greece* and *Sweden* mining and insurance respectively are subject to concession requirements, though in the latter case these requirements apply equally to domestic insurance companies.

A variety of other measures may be employed to regulate foreign investment. Limits may be set on foreign ownership of shares or voting rights of enterprises, foreign investment may be permitted only in certain forms (e.g. a subsidiary), constraints may exist on the growth of foreign entities into new areas of activity or even within the same sector, or there may be requirements with respect to the nationality or residence of administrators, directors, auditors etc.

These kinds of measures are prevalent notably in five sectors: banking and related financial services, insurance, maritime transport, air transport and mining. In the banking sector, the following countries limit foreign investment using one or another of these measures: *Australia*, *Austria*, *Canada*, *Finland*, *France*, *Greece*, *Ireland*, *Italy*, *Luxembourg*, *Norway*, *Sweden*, *Switzerland* and *Turkey*. Similarly, foreign investment in the insurance sector is limited in *Austria*, *Canada*, *Finland*, *Italy* and *Switzerland*. For maritime transport, the following countries are concerned: *Australia*, *France*, *Germany*, *Italy*, *Japan*, the *Netherlands*, *Norway*, *Portugal*, *Sweden*, *Switzerland*, the *United Kingdom* and the *United States* (for fishing and transport other than cabotage and offshore supply of all goods). As for air transport, such restrictions apply in *France*, *Germany*, *Italy*, *Japan*, the *Netherlands*, *Norway*, *Sweden*, *Spain*, *Switzerland*

and the *United Kingdom*. Concerning mining, the following countries are involved: *Australia, Finland, France, Greece, Japan, New Zealand, Norway, Turkey* and the *United States*.

In many other sectors, foreign investment is restricted by one or another means such as those given as examples above. This is the case in particular for broadcasting in *Australia, Canada*, and the *United Kingdom*; in the field of energy in *Canada, Switzerland* (hydrocarbon, gas and atomic energy) and in the *United States* (atomic energy); fishing and tourism in *Norway*, travel agencies in *Portugal* and some other sectors such as a number of professions, agriculture, publishing and casinos in *France*.

In some countries, authorisation for foreign investment may be subject to a reciprocity requirement or to agreements according to which a country grants authorisation to non-residents to the extent that the same treatment is granted abroad to its residents. This is the case in particular in the banking and the insurance sectors and can be found in the following countries; concerning the banking sector: *Australia, Austria, Canada, Finland, France, Germany, Greece, Ireland, Italy, Japan*, the *Netherlands, Norway, Switzerland, Turkey* and the *United Kingdom*; concerning the insurance sector: *Austria, Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, Norway, Spain, Turkey* and the *United Kingdom*. Other sectors may be affected by such requirements: for example, road transport, vehicle rental, agriculture, a number of professions, audiovisual works, travel and tourism, and publishing in *France*.

In addition to the authorisation procedure prevailing for foreign investment in particular sectors or to measures whose effects are to limit foreign investment in some sectors, establishment of foreign enterprises, in particular branches, may be subject to special conditions addressed specifically to non-resident investors. These include, *inter alia*, deposit or solvency requirements, domiciliation of capital and minimum equity investment. Those establishment conditions can be found mainly in two sectors: insurance and banking and related financial services. For the insurance sector, the following countries maintain such conditions: *Canada, Finland, France, Ireland, Japan*, the *Netherlands, Norway, Sweden*. For the banking sector, the countries concerned are *Canada, France, Greece, Italy, Ireland*, and *Turkey*.

In a few countries, measures of the kind considered in the above paragraphs may be taken by authorities other than the central or federal government (those of States, provinces, regions, autonomous units, etc.). This is the case in *Australia, Austria, Canada, Italy, Switzerland* and the *United States*. In *Australia*, State governments have the right to introduce policies restricting foreign investment. In *Austria* and *Switzerland*, a number of provinces and all Cantons respectively have the right to restrict foreign acquisition of real estate. In *Canada*, a number of provinces can restrict foreign investment in land, real estate and non-banking financial services. In *Italy*, a number of regions have autonomous power with regard to the establishment of new banks and the opening of branches. In the *United States*, where federal States have the right to restrict foreign and out-of-state investment, some States in some cases exercise this right in domestic shipping, electric power utilities, commercial fishing, minerals, land, banking and insurance. Those States in any case remain subject to a constitutional rule prohibiting them from imposing unreasonable burdens on inter-state or foreign commerce.

C. PUBLIC, PRIVATE OR MIXED MONOPOLIES

Sectors covered by public, private or mixed monopolies fall under the following main categories in most countries: postal services, telegraph, telephone and telecommunications, broadcasting, transport, energy production and distribution, alcohol production and distribution, tobacco and games.

In all OECD countries[6] a public monopoly, a private monopoly or a mixed monopoly covers entirely or in part the field of postal services, telegraph and telephone services and telecommunications. There are many variations as to the extent of these monopolies. For instance, in *Denmark, Greece* and *Luxembourg*, the monopoly is restricted to the postal service. In *Canada*, a monopoly situation exists for all practical purposes in the areas of postal services and satellite communications. In some provinces, some monopoly rights are attributed to telephone companies. In *Finland*, telecommunications are not covered by a monopoly. In *Ireland*, the monopoly on postal services does not extend to parcels, and in *Switzerland*, concessions may be accorded for telecommunications activities which have a purely private purpose. In the *United States*, the Communications Satellite Corporation was established by the Communications Satellite Act of 1962 as a private corporation to establish and operate a commercial satellite system. Under the Act, not more than an aggregate of 20 per cent of the shares of its stock which are offered to the public may be held by aliens, foreign governments, or foreign-owned, -registered or -controlled corporations. In addition, broadcasting is covered by a public, private or mixed monopoly in *Austria*, *Belgium*, *Finland*, *France*, *Germany*, *Greece*, *Ireland*, *Luxembourg*, the *Netherlands*, *Norway*, *Sweden*, *Switzerland* (public broadcasting) and *Turkey*. In *Finland* and *Norway*, however, a substantial number of private organisations have recently been granted permission to engage in broadcasting.

As far as transport is concerned, air transport is covered by public, private or mixed monopolies in *Australia* (for international travel), *Belgium*, *Greece*, *Portugal* and *Switzerland* (for certain general interest lines). In addition, construction and exploitation of airfields and maintenance and exploitation of inland waterways and some harbours are covered by monopolies in *Belgium* as are airports in *Turkey*, airports, roads, motorways, inland waterways and ports in *Germany*, and the operation of sea and airports in *Greece* and *Portugal*. In all of the countries already mentioned in this paragraph, as well as in *France*, *Ireland*, the *Netherlands*, *Norway*, *Spain* and the *United Kingdom*, monopolies also cover rail services. In *Switzerland*, the right to transportation of passengers on a regular basis belongs to the national post, telephone and telegraph company when this right is not modified by other federal laws (concerning, for instance, railway transport). Concessions can be given to other companies but under various conditions, including the condition that they should not overly compete with public transport companies.

In the energy sector, electricity production is covered by public, private or mixed monopolies in *Australia*, *Canada*, *France*, *Greece*, *Italy*, the *Netherlands*, *New Zealand* and *Portugal*. In two of these countries – France and Portugal – this monopoly also covers distribution, as well as import and export. In *Canada*, monopolies in the energy sector pertain mainly to provincial electrical utilities. Water and gas distribution are covered by monopolies in *Belgium*, *Greece*, *Italy*, the *Netherlands*, *Portugal* and the *United Kindom*. This monopoly also applies to gas production. In *Spain* there is a mixed monopoly in the petroleum sector. In *Portugal*, there exists a public monopoly in the petroleum and petrochemical industries. In *France*, production and distribution of gas – with the exception of natural gas – are under a monopoly, as is the import of energy resources for the production of nuclear energy. Coal and petroleum production is also under a monopoly in *France*. In the *United Kingdom*, privately-owned mines may only operate with a licence from the National Coal Board in exchange for which a royalty must be paid to the National Coal Board. The number of employees and annual output of private mines is limited by statute. In *Luxembourg* and *Norway*, electricity distribution is covered by public monopolies, as well as import and export of electricity in *Norway*.

Trade in alcoholic beverages (excluding light beer) is covered by monopolies in *Finland*. The same prevails in *Turkey* in addition to international trade of such goods (except for wine and beer). This is also the case for import and sales of alcoholic beverages in *Norway*, *Sweden* and *Finland* (where export is also covered) and for the sale of alcoholic beverages in some provinces of *Canada*; for the tobacco industry in *Austria*, *Japan* (only manufacturing), *Spain*, *France* (here including matches also) and *Turkey*. Similarly, in *Switzerland* the manufacture and import of spirits is handled by a public monopoly. In *Australia*, *Austria*, *Finland*, *Germany*, *Greece* and *Norway* the conducting of lotteries is covered by a monopoly, as is betting on sports events in *Greece*, *Finland*, *Norway* and *Sweden*.

The distribution of selected primary products is covered by monopolies in *Australia* (e.g. wheat); as is the import/export or distribution of textile fibres relating to fishing, grains, concentrated foods, medicines, drugs and raw fish in *Norway*; and the import and distribution of salt as well as the import of flour for bakery products in *Switzerland* and salt in *Austria*. In *Japan*, the purchase, import, manufacturing and sale of salt are under government monopoly. In *Finland and Sweden*, a public monopoly exists in the field of employment services. In *Sweden*, the retail trade of pharmaceutical products is also covered by a public monopoly. In *Portugal* ownership of natural resources is a State monopoly.

Finally, monopolies also exist in the insurance area, such as insurance covering commercial and political risks arising from external trade transactions carried out by the government in *Spain*; credit insurance in *Portugal*; export credit insurance in *Luxembourg*; health, pension and unemployment insurance in *Finland*; public automobile insurance and health insurance plans in some *Canadian* provinces; crop insurance in *Sweden*. In some *Swiss Cantons* there exist monopolies in the sector of fire insurance for buildings in favour of the respective public insurance institutions.

NOTES AND REFERENCES

1. See *Controls and Impediments Affecting Inward Direct Investment in OECD Member Countries*, OECD, 1982.
2. *International Direct Investment: Policies, Procedures and Practices in OECD Member Countries*, OECD, 1979.
3. See *National Treatment for Foreign-controlled Enterprises*, OECD, 1985.
4. See the OECD *Code of Liberalisation of Capital Movements*, Article 3.
5. See the OECD *Code of Liberalisation of Capital Movements*; Remarks *i)* and *ii)* to Item I, List A, Annex A.
6. This may not be the case for Iceland as no updated information was received from this country.

Chairman GIBBONS. Next we are going to have some fine people from the Customs and International Trade Bar Association, Mr. Elliott and Mr. Vance, who is the chairman of the Trial and Appellate Practice Committee, and Mr. Stewart A. Baker of Washington, D.C.

Gentlemen, I look forward to this discussion because I think we are getting right to the guts of this whole agreement here, the dispute settlement mechanism. I want you to know that I have a personal pride in the dispute settlement mechanism and that I have researched it and think it is constitutional and that I think it is a good start. You can say anything you want to about it.

STATEMENT OF DAVID O. ELLIOTT, PRESIDENT, CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION, ACCOMPANIED BY ANDREW P. VANCE, CHAIRMAN, TRIAL AND APPELLATE PRACTICE COMMITTEE

Mr. ELLIOTT. My name is David Elliott and I appear here today as president of the Customs and International Trade Bar Association. I am accompanied by Andrew P. Vance, chairman of the association's Trial and Appellate Practice Committee.

Our bar association is a national professional association of lawyers who practice before the U.S. Court of International Trade and the Court of Appeals for the Federal Circuit. We currently have over 300 members from 19 States and the District of Columbia. CITBA is the successor to the Association of the Customs Bar, which was founded in the late 1920s. CITBA and its predecessor have offered opinions to Congress on measures affecting the U.S. Customs Court, the U.S. Court of Customs and Patent Appeals, and their successors, the U.S. Court of International Trade and the U.S. Court of Appeals for the Federal Circuit, for over a half century.

CITBA is not opposed to an agreement on a free trade area with Canada. CITBA vigorously opposes, however, the inclusion in such an agreement of the withdrawal of review jurisdiction in countervailing and antidumping matters from the U.S. Court of International Trade and its appellate tribunals, including the Supreme Court, and the proposed vesting of such jurisdictions in a supra-national panel to be made up of persons nominated by the executive branches of the Canadian and United States Governments.

In our opinion, inclusion of such a provision by the negotiators was an improper overreaching of their delegation from Congress. More importantly, it asks Congress to approve a scheme that allows the assessment of duties on American citizens and companies without judicial scrutiny of the legality thereof.

Judicial review of imposition of customs duties by duly constituted courts of the United States has, with one brief and unintentional exception, been accorded to all importers since the foundation of the republic. Congress is now confronted by the executive branch with an agreement which seeks to withdraw this jurisdiction and to lodge it in a supra-national panel.

Our association's grounds for opposition are twofold. First, it is our view that the binational panel provision of the agreement is unconstitutional in that it would violate article III of the Constitution, which vests the judicial power of the United States in the Supreme Court and such inferior courts as Congress establishes; it would violate the due process provisions of the Constitution; and it would result in unequal protection of the laws to U.S. citizens. Second, we view the binational panel provision as unwise on policy grounds.

The issue raised by the proposed binational panel is most serious and indeed was also among the major causes of the American Revolution: Do citizens have the right to challenge the methods used to calculate and impose taxes upon them by Government officials before impartial, properly appointed members of the judiciary? The answer as regards all kinds of customs duties has always been that they do.

Congress is asked now, after 200 years, to agree to a trade agreement which will willfully do away with this review. It is fundamental to our social compact. A divestiture of this jurisdiction may be the beginning of a slippery slope which will confuse the law as it defines the rights of citizens, both importers and U.S. manufacturers and labor unions, the status of the U.S. Court of International Trade, and the subject matter which may be properly placed on the table by U.S. negotiators empowered by Congress to negotiate trade agreements.

It will reverse an historic trend which culminated in the enactment of the Trade Agreements Act of 1979, promising access, and in fact equal access, for both importers and U.S. manufacturers and labor unions, to courts of the United States to review the propriety of agency decisions in these very antidumping and countervailing duty matters.

Our association's positions are more fully treated in our written submission filed with the committee and in a more in-depth paper to be completed and made available in the very near future.

That completes my statement. Mr. Vance and I are prepared to answer questions that the committee may have.

Thank you.

[The statement of Mr. Elliott follows:]

CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION'S STATEMENT IN OPPOSITION TO WITHDRAWAL OF JURISDICTION IN THE UNITED STATES COURT OF INTERNATIONAL TRADE AND ITS APPELLATE TRIBUNALS TO REVIEW ANTIDUMPING AND COUNTERVAILING DUTY DECISIONS OF FEDERAL AGENCIES INVOLVING CANADIAN MERCHANDISE

I. GENERAL INFORMATION: THE ASSOCIATION AND ITS POSITION

The Customs and International Trade Bar Association ("CITBA") is a national professional association of lawyers who practice before the United States Court of International Trade and the Court of Appeals for the Federal Circuit. CITBA currently has over 300 members from 19 states and the District of Columbia. CITBA is the successor to the Association of the Customs Bar, which was founded in the late 1920s. CITBA and its predecessor have offered opinions to Congress on measures affecting the United States Customs Court, the United States Court of Customs and Patent Appeals, and their successors, the United States Court of International Trade and the United States Court of Appeals for the Federal Circuit, and on certain trade measures for over a half-century. I am David O. Elliott, President of the Association and I am accompanied by Andrew P. Vance, Chairman of the Association's Trial and Appellate Practice Committee.

CITBA is not opposed to an agreement on a free trade area with Canada.

CITBA vigorously opposes, however, the inclusion in such an agreement of the withdrawal of review jurisdiction in countervailing and antidumping matters from the United States Court of International Trade and its appellate tribunals including the Supreme Court, and the proposed vesting of such jurisdiction in a supra-national panel to be made up of so-called experts nominated by the executive branches of the Canadian and U.S. governments, whether or not such nominations are to be approved by the Congress of the United States and the Canadian Parliament.

In our opinion, inclusion of such a provision by the negotiators was an improper overreaching of their delegation from Congress. More important, it asks Congress to approve the imposition of an import duty on some American citizens and companies which may import goods from Canada without judicial scrutiny of the legality thereof. Judicial review of imposition of customs duties by duly constituted courts of the United States has, with one brief and unintentional exception, been accorded to all importers since the foundation of the Republic. Congress is now confronted by the Executive Branch with an agreement, negotiated beyond the authority delegated, which seeks to withdraw this jurisdiction and to lodge it in a supra-national panel. As will be discussed below, there are serious questions as to whether such a step can be taken within the bounds of the Constitution.

The underlying question is not just whether this step can be taken without violating the Constitution. The question is also whether, presuming that such a step could lawfully be taken, there is any reason whatever to throw in the ashbin 200 years of importers' rights to judicial review, and to rescind the more recently developed rights of U.S. industry and labor to such review in important trade questions.

The most serious question which such action raises was also among the major causes of the American Revolution: Do citizens have the right to challenge the methods used to calculate and impose taxes upon them by officials before impartial, properly appointed members of the judiciary?[1] The answer as regards all kinds of customs duties has always been that they do. Congress is asked now, after 200 years, to agree to a trade agreement which will willfully do away with this review. Thus, the question is not a minor one. It is fundamental to our social compact. A divestiture of this jurisdiction is the beginning of a slippery slope which will confuse the law as it defines the rights of citizens (both importers and U.S. manufacturers and labor unions), the status of the United States Court of International Trade, and the subject matter which may be properly placed on the table by U.S. negotiators empowered by Congress to negotiate trade agreements. It will reverse an historic trend which culminated in the enactment of the Trade Agreements Act of 1979, promising access, and, in fact, equal access for both importers and U.S. manufacturers and labor unions, to Courts of the United States to review the propriety of agency decisions in these very antidumping and countervailing duty matters.[2]

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[1] The Declaration of Independence inextricably links the right to impartial judicial review and the harassment by unreviewed executive functionaries in its indictment of George III: "-He has obstructed the Administration of Justice, by refusing Assent to Laws for establishing Judiciary powers. -He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries. -He has erected a multitude of New Offices, and sent hither swarms of officers to harass our people, and eat out their substance."

II. CURRENT STATUS OF JUDICIAL REVIEW IN ANTIDUMPING AND COUNTERVAILING DUTY INVESTIGATIONS

Under current statute law,[3] the United States Court of International Trade reviews final antidumping duty orders and final countervailing duty orders and the underlying agency determinations of the International Trade Administration (United States Department of Commerce), and of the United States International Trade Commission. This review is conducted on the agency record, and is not a de novo proceeding in the Court. Generally, nothing can be added at the Court level to the record as made before the agency. The Court reviews final orders using the usual standard applicable to federal court review of most governmental agencies: whether the decision below is unsupported by substantial evidence or is not in accordance with law. If the Court finds that the agency action, as reviewed on the record, is unsupported by substantial evidence or not in accordance with law, the Court states the law as it construes it or points out the area of deficiency in fact-gathering and remands the matter to the agency concerned for re-determination.

This method of judicial review, which requires that a civil action be brought by filing a summons in the Court within 30 days of the date of the final order, is open equally to all the parties to the administrative proceedings. The United States manufacturers or labor groups which brought on the investigation may bring a Court action, just as foreign governments and the importers or foreign exporters may.

In such a proceeding, the Court endeavors to check the agencies' interpretation of the statute as it applies to the specific merchandise and industry before it. The Court does not, however, at any time hear political arguments or endeavor to address matters of underlying policy. Its job is thoroughly judicial. In the majority of investigations, no action is filed in the Court. In the majority of cases involving Canadian products where an action has been filed, the Court has acted impartially and has frequently acted in a manner which removed barriers to Canadian trade as imposed by administrative action.

III. CONGRESS HAS NEVER WILLFULLY WITHDRAWN IMPORTERS' RIGHTS TO SEEK JUDICIAL REVIEW OF DUTY ASSESSMENTS

Although the United States has from the earliest era of our national history asserted its sovereign immunity to suit by its citizens without its consent, cases involving the assessment of customs duties did not involve sovereign immunity until the enactment of the Customs Administrative Act of 1890.[4] Until that time, importers who disputed the classification of their merchandise by Customs or the regularity of the appraisement sued the Collector of Customs for their district individually in the local United States Circuit or District Court. Thereafter, the decisions of such courts were reviewed by appellate tribunals, including in numerous instances, the Supreme Court. These suits were generally brought in assumpsit (though sometimes in trover or trespass), forms of common law actions which were sanctioned by the law of England in customs matters before the United States revolution and which were preserved here thereafter for more than a century. It is important to note that it did not involve a suit against the sovereign, but rather a suit against the sovereign's agent (the Collector) for not carrying out the law in a proper way.

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[2] It would seem that a possible alternative to the bi-national panel is a statutory preference for these cases setting out time limitations for hearing and decision in the CIT (after the filing of the administrative record) and in the appellate tribunals. Another possibility is the voluntary utilization of the panels on the agreement of all parties to it and to be bound by the panel's decision.

[3] 28 U.S.C. 1581(c) and 19 U.S.C. 1516a.

[4] Act of June 10, 1890, 26 Stat. 131.

By section 2 of the Act of March 3, 1839, Congress required that the collectors of Customs pay over to the Treasury all money which they collected, including that paid by importers under protest. Provision was made that the Secretary should pay out the money paid under protest when satisfied that any money paid into the Treasury on protest was more than the law required to be paid. Up until that time, the practice had grown up among the collectors at the larger ports of keeping large sums of money paid by importers to honor any protests found to be valid by the courts. The 1839 statute was ambiguous as to what the results of mandatory payment to the Treasury should be, but the collectors claimed that the importers could not sue them in assumpsit to get back the duties paid.

This view was upheld by a majority of the Supreme Court in *Cary* v. *Curtis*, 44 U.S. (3 How.) 236, 11 L. Ed. 576 (1846). The Court stated that the Congress could withdraw jurisdiction from the courts of the United States inferior to the Supreme Court as it wished. The Court was careful, however, even while making general pronouncements, to indicate that there might be other methods by which a suit could be brought (44 U.S. at 250), such as refusal to deposit the duties in dispute, which would cause detention of the merchandise, and then an action in trover or replevin to recover them. Thus, the Court did not rule that Congress had cut off all of the importer's right to sue. It did state, *obiter dicta*, that Congress could do so. A powerful dissent to the majority opinion was filed by Justice Joseph Story, the leading 19th century expositor of the Constitution. After concluding that the majority interpretation of Congress's ambiguous act had, as a practical matter, cut off an importer's right to sue for excess duties paid, Story denied Congressional power to do so. We believe that Justice Story's phrasing of the question and his answer to it, although not the majority opinion, reflect what was then, and should be now, the reaction of most legislators and citizens to this Constitutional question.

Congress reacted swiftly to the Supreme Court decision in *Cary* v. *Curtis*. Congress was in session when this decision was handed down. *Within* one *month*, Congress passed an Act restoring the importer's right to suit thereby nullifying the majority decision in *Cary v. Curtis*. The Act[5] provided, in pertinent part, "That nothing contained [in the 1839 Act] ... shall take away, or be construed to take away or impair, the right of any person or persons who have paid or shall hereafter pay money, as and for duties under protest, ... to maintain any action at law againt [the] collector, or other person acting as such, to ascertain and try the legality and validity of such demand and payment of duties ..."

Thus, although Congress did not deny the power which the Supreme Court majority found in *Cary* v. *Curtis*, Congress immediately explained that it had not intended, despite the majority's reasoning, to deprive importers of their right to suit. We do not doubt (nor have other commentators before us) that this decision was made on the basis of Justice Story's dissent and the fundamental Constitutional question which it raised. The American people, through their representatives, determined that the right to judicial review in duty matters should not be withdrawn.

From that time to this, Congress has never passed a statute which denied importers the right to challenge the legality and validity of a duty assessment in court. Thus, it may fairly be said that importers have never been deprived of judicial review of the legality of duty exactions.

IV. JUDICIAL REVIEW OF ANTIDUMPING DUTY AND COUNTERVAILING DUTY DETERMINATIONS HAS ALWAYS BEEN AVAILABLE TO IMPORTERS. CONGRESS HAS ACTED TO MAKE IT EQUALLY AVAILABLE TO DOMESTIC INTERESTED PARTIES. THESE RIGHTS WOULD BE FORFEITED BY THE PROPOSED WITHDRAWAL OF JURISDICTION FROM THE CIT.

A. The Statutes

The countervailing duty statute was first enacted as section 5 of the Tariff Act of 1897.[6] It was carried forward through subsequent tariff acts and finally became section 303 of the Tariff Act of 1930.[7] This section is still applied to imports from countries which have not accepted the GATT Code on Subsidies and Countervailing

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[5] Act of February 26, 1845, 5 Stat. 727.

[6] Act of July 24, 1897, 30 Stat. 151.

[7] June 17, 1930, c. 497, title III, part I, section 303, 46 Stat. 687.

Duties (Geneva, 1979).[8] Otherwise, the countervailing duty statute contained in Title VII of the Tariff Act of 1930, as added by the Trade Agreements Act of 1979[9] applies. The latter statute applies to imports from Canada.

The antidumping duty statute was first enacted as the Antidumping Act of 1921.[10] It was amended in 1954, 1958, 1970, and 1975. The 1921 Act was repealed by section 106(a) of the Trade Agreements Act of 1979 (93 Stat. 193), and replaced by new provisions added as part of Title VII, Tariff Act of 1930. The basic structure of the Antidumping Act of 1921 was maintained, but more definitions were provided and more procedural guidance was given to the agencies involved in the administration of the act.

B. Importers' Right to Appeal

Importers have always been able to challenge assessments under these statutes. One of the first such cases, involving the countervailing duty statute, went to the Supreme Court, *Downs* v. *United States,* 187 U.S. 496 (1903). An antidumping case has yet to be considered by the Supreme Court, but assessments of antidumping duties were reviewed by the Board of General Appraisers, by the United States Customs Court, and by the United States Court of Customs Appeals and its successor, the Court of Customs and Patent Appeals from the time of the enactment of the statute, *see, e.g., United States* v. *Tower & Sons,* 14 Ct. Cust. Appls. 421 (1927); *United States* v. *Central Vermont Railway Co.,* 17 Ct. Cust. Appls. 166 (1929); *Kleberg & Co. (Inc.)* v. *United States,* 21 CCPA 110 (1933).

These reviews were all made possible by the fact that the importer could protest the assessment, or appeal to reappraisement under the rules applicable for the assessment of ordinary duties. In fact, countervailing and antidumping duties have been treated as special duties, and have always been the subject of appeal when assessed.

C. U.S. Manufacturers' Rights to Appeal

By section 516 of the Tariff Act of 1922[11], carried forward as section 516 of the Tariff Act of 1930,[12] Congress for the first time gave United States manufacturers the right to contest the classification and valuation of merchandise imported into the United States. Before this enactment, payment of duties had been regarded simply as a matter between the importer and the Government. By these statutes, Congress recognized that the interests of United States producers were sufficient to entitle them to challenge the methods employed by the Treasury, as a general matter, not limited to countervailing and antidumping duties.

In the Trade Act of 1974,[13] Congress amended the statute to make clear that U.S. manufacturers were to have the right to institute suit in the Customs Court to review negative countervailing and antidumping duty determinations. The Court acted swiftly to put into effect these grants of jurisdiction, which Congress had termed "Equal Judicial Review Rights for Domestic Producers."[14] *SCM Corporation* v. *United States (Brother International Corp., Party-in-Interest),* 80 Cust. Ct. 226, C.R.D. 78-2, 450 F. Supp. 1178 (1978). By the Trade Agreements Act of 1979, Congress enacted a complete, balanced, and equal judicial review statute. This statute, section 516A of the Tariff Act of 1930[15], provides that any party to an administrative countervailing duty or antidumping duty investigation may challenge the determinations in the Court of International Trade, as noted above. The statute, since its enactment in 1979, has given rise to cases by both U.S. manufacturers and other interested parties and by importers and exporters and has created strict judicial oversight of the agency determinations involved.

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[8] Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the GATT (Geneva, 1979); Section 2, Trade Agreement Act 1979, 93 Stat. 147.

[9] Pub. L. 96-39, July 26, 1979, 93 Stat. 151.

[10] Act of May 27, 1921, c. 14, 42 Stat. 11.

[11] Act of Sept. 21, 1922, c. 356, Title IV, 42 Stat. 970.

[12] Act of June 17, 1930, c. 497, Title IV, 46 Stat. 735.

[13] Jan. 3, 1975, Pub.L. 93-618, Title III, 88 Stat. 2048.

[14] *Senate Report No. 93-1298,* 93rd Cong., 2d Sess. 178, *reprinted in, 1974 U.S. Code Cong. & Admin. News,* 7314.

[15] 19 U.S.C. 1516a.

Section 516A, as may be seen from the above discussion, is the culmination of at least 25 years of effort by U.S. manufacturers, the Courts, and Congress to fashion judicial review on an equal basis for United States manufacturers, labor unions, and others concerned in antidumping and countervailing duty determinations. While it may be true that Congress could constitutionally withdraw this jurisdiction, as to all such cases for all persons, such a withdrawal would clearly be an affront to every U.S. manufacturer and labor union seeking protection from unfair trade practices.

We do not believe that the necessity for judicial review brought on by the complaints of U.S. interested parties which made the enactment of section 516A so necessary in 1979 has diminished in the slightest since that time. In fact, it has grown as complaints regarding dumping and countervailable subsidies have grown.

V. THE PROPOSED BI-NATIONAL PANEL WILL NOT BE A COURT. ITS CREATION WOULD RAISE GRAVE CONSTITUTIONAL QUESTIONS.

Article III, Section 1 of the Constitution provides that:

> The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be disminished during their Continuance in Office.

The meaning of this provision is twofold. First, except for the Supreme Court, Congress may define the jurisdiction of federal courts and may withhold certain jurisdiction from them. Second, however, Congress must vest jurisdiction of such matters, if at all, in some Federal Court.[16]

Thus, the bi-national panel suggested by the proposed agreement with Canada cannot, under the United States Constitution, be considered a Court of the United States. It cannot receive judicial power. Thus, this panel will not even rise to the dignity of a "legislative" court created under Article I of the Constitution.

Finally, as stated above, Congress's right to withdraw from importers all resort to the federal courts in duty assessment matters, while apparently allowed by the decision in Cary v. Curtis, supra, is severely undermined by Congressional action and Court opinions in the one hundred and forty years since that decision was rendered. In addition, Congress's creation of a remedy whereby aggrieved parties may, in effect, sue each other could arguably be viewed as a vesting of case or controversy jurisdiction in federal courts which cannot be vested elsewhere under Article III, as was determined in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., et al., 458 U.S. 50 (1981), which held that Congress cannot vest the hearing of actions between private parties to enforce private rights in courts not created under Article III of the Constitution.[17]

In brief, Congress should not believe that the bi-national panel suggested by the initialed free trade agreement with Canada is in any way a court. Nothing which Congress can do will constitute it a court as that word is understood in the United States Constitution. Its creation will create a major rift in the system of United States Courts and will leave some importers and some United States manufacturers and labor organizations without any impartial judicial review in antidumping duty and countervailing duty matters. This also raises a question as to whether those importers, American manufacturers, and labor organizations are (a) receiving equal protection of the laws or (b) having their property taken without due process of law.

Today, it is suggested that Congress should enact such an anomalous arrangement with Canada. It is thoroughly conceivable, however, that the same arrangement may then be demanded by other countries with which the United States already has, or may try to negotiate, trade agreements. If the jurisdiction of the United States Court of International Trade over countervailing and antidumping matters, worked out over decades, can be so easily withdrawn and vested in a non-judicial panel, there is no reason why its entire jurisdiction could not be so removed and entrusted to all sorts of supra-national panels. For that matter, such actions would create a precedent for the withdrawal of jurisdiction over Internal Revenue matters from the Tax Court and from the District Courts. No U.S. taxpayer would be guaranteed his day in court if this withdrawal of jurisdiction can be effected.

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[16] See: Eisentrager v. Forrestal, 174 F. 2d 961 (C.A.D.C., 1949); Martin v. Hunter's Lessee, 14 U.S. (1 Wheat.) 304, 4 L. Ed. 97 (1816); and Story, Constitution of the United States, 5th Ed., 1891, sections 1590-1597.

[17] In that case, the Federal bankruptcy courts created by the Bankruptcy Act of 1978, Pub.L. 95-598, 92 Stat. 2549.

We do not believe that, understanding the consequences of enacting such a provision, Congress will want to begin this process of divesting U.S. Courts of their jurisdiction to hear citizens' grievances and in effect vesting in Executive agencies tremendous powers not answerable to the Courts. Such a process runs counter to our entire national experience. It should not be sanctioned by enactment.

It is important to understand that the bi-national panels in reviewing ITA and ITC Final Antidumping and Countervailing Determinations will be reviewing domestic United States statutory provisions.[18] The effect of the panels' decisions can result in the assessment of dumping or countervailing duties on an importer or the denial of relief to a petitioner whether a United States manufacturer, producer, wholesaler, labor union, or consumer group seeking to have such duties assessed.

1. The Bi-National Panel Would Modify the Basic Scheme of the National Government.

International agreements, like statutes, must conform to the Constitution. Reid v. Covert, 354 U.S. 1, 16-17 (1957); The Cherokee Tobacco, 78 U.S. 616, 620-21 (1871). Accordingly, it is impermissible for such agreements to modify the basic character of the Government as conemplated by the Constitution. Speaking specifically with respect to treaties, the Supreme Court stated in Geofroy v. Riggs, 133 U.S. 258, 267 (1890):

> The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or its departments, and those arising from the nature of the government itself and of that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent. [Emphasis added.]

This passage from Riggs was quoted and endorsed in the more recent case of Reid v. Covert, supra, 354 U.S. at 17-18. It is therefore clear that the trade agreement in question must conform to the constitutional scheme of the Government. The agreement is Constitutionally defective to the extent it fails to conform to the that rule.

Articles I, II, and III of the Constitution placed the powers of the National Government in the three specifically identified Branches. Accordingly, all power exercised by the Government must be exercised by one of these identified Branches or by an agency or other delegatee lawfully empowered to perform a governmental role. Logically, it would modify the character of the Government if any power defined by the Constitution were exercised by any other body or organization.

2. The Bi-national Panel Procedure Would Violate the Due Process Provisions of the U.S. Constitution

The Supreme Court has "traditionally" held that "the Due Process Clauses protect civil litigants who seek recourse in the courts either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances". Logan v. Zimmerman Brush Co., 455 U.S. 422, 429, 71 L.Ed. 2d 265, 273 (1982).

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[18] Article 1902 of Chapter 194 of the Agreement provides that "Each party reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of the other Party." (Emphasis added.) Article 1911 spells out what the statutory provisions are.

The fact that a trial or hearing has been provided does not mean that due process has been completely satisfied. "[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." Boddie v. Connecticut, 401 U.S. 371, 377, 28 L.Ed. 2d 113, 118 (1971). This "opportunity" should be one which allows "for a hearing appropriate to the nature of the case" Id. 401 U.S. at 378, 28 L.Ed. 2d at 119 (quoting Mullane v. Central Hanover Trust Co., 339 U.S. 306, 313, 94 L.Ed. 865, 873. (1950). However, "due process does not always require a full and formal adversary hearing." Ong v. Tovey, 552 F.2d 305, 307 (9th Cir. 1977).

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." Mathews v. Eldridge, 424 U.S. 319, 332, 47 L.Ed. 2d 18, 31 (1976). The Court in Mathews went on to state that when a property interest is concerned, "some form of hearing is required." Id. at 333, 47 L.Ed. 2d at 32. It should be noted that a cause of action has been held to be "a species of property protected by the Fourteenth Amendment's Due Process Clause." Logan v. Zimmerman Brush Co., 455 U.S. 422, 428, 71 L.Ed. 2d 265, 273 (1982), citing Mullane v. Central Hanover Trust Co., 339 U.S. 306, 94 L.Ed. 865 (1950). The Court in Logan, supra, went on to state that: ". . . having made access to the courts an entitlement or a necessity, the state may not deprive someone of that access unless the balance of state and private interests favors the government scheme." 455 U.S. at 430 n.5, 71 L.Ed. 2d at 274. Furthermore, "[w]hile the legislature may elect not to confer a property interest . . . it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards." Id. at 432, 71 L.Ed. 2d at 275, quoting from Vitek v. Jones, 445 U.S., at 490-491, n.6, 63 L.Ed. 2d 552, quoting Arnett v. Kennedy, 416 U.S. at 167, 40 L.Ed. 2d 15, (opinion concurring in part).

While it is undoubtedly true that the amount of an importer's customs duty liability may initially be determined in an administrative proceeding such as that conducted by the ITA on Administrative Review, from the beginning of this Republic, and under the common law of England, an importer had the right to have the correctness of his duty assessments, and the decisions a part thereof, reviewed in a court of law by suits in assumpsit against the Collector or, subsequently, against the United States. The Dispute Settlement provisions attempt to deny that right to the importer and commit to a bi-national panel the power to interpret and apply United States domestic law and effectively set the importer's duty liability to the United States. The denial of a hearing on such a matter before an inferior court subject ultimately to review by the Supreme Court results, we believe, in the taking of an importer's property without due process of law.[19]

3. The Bi-national Panel Would Violate Article III of the Constitution

Article III provides that "The judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." We believe that the attempt to preclude judicial review of ITA and ITC dumping and countervailing duty determinations that result in increased duties would be found unconstitutional as an attempt to give to the bi-national panel powers belonging properly to the courts of the United States.[20]

As has been stated by other commentators on the FTA, the apparent effort to deny judicial review to the courts of ITA and ITC decisions involving issues relating to constitutional questions, is but another example of the violation of the dictates of

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19. If it be deemed that the United States has simply withdrawn its consent to be sued in such matters, would that withdrawal then revive the common law right to sue the appropriate official? See Article VII of the Constitution preserving in common law suits the right to trial by jury. See also Washington International Insurance Co. v. United States, ___ CIT ___, F. Supp. ______, Slip Op. 88-4 (January 12, 1988) wherein in a 2-1 decision a three judge panel of the Court of International Trade held that in customs cases, an importer always has had, and has today, the Seventh Amendment right to trial by jury.]

20. See Justice Brennan's concurring opinion in Thomas v. Union Carbide Agric. Products Co., 473 U.S. 568, 594 ff (1985); and Justice Brennan's plurality opinion in Northern Pipeline Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).

Article III.[21] But merely providing for judicial review of constitutional issues would not solve the problem for it has been held that the questions raised in Customs litigation are judicial in nature[22] and their resolution by a non-judicial, non-United States body violates the tri-patriate nature of our Governmental system and denies to the importer citizen the protection afforded by an impartial and independent judiciary.

4 The Panel Cannot Be Justified Under Article II.

It is impermissible for Congress to delegate important legislative power to an international forum like the bi-national panel, so that the panel cannot be justified under Article II, assuming it would perform a legislative function like that of a typical "administrative court."

The reason for limiting delegations of power goes to the heart of our system of Government. Groups and organizations outside the Government are not politically responsible to the electorate, yet the Legislative Branch was always intended to be the most politically responsive Branch of Government, as explained by Professor Laurence Tribe in American Constitutional Law (1978) at 286. Of course, the bi-national panel would vest important legislative authority in ad hoc groups of private individuals, some of whom — many times, a majority of whom — would not even be citizens of the United States. This blatantly would be inconsistent with the notion of political responsibility.

5. Adoption of The Bi-national Disputes Resolution Panel Would Result in Unequal Protection of the Laws

In the prior sections we have discussed briefly the denial of due process and the abrogation of the judicial power inherent in the Bi-national Disputes Resolution Panel as applied to ITC and ITA dumping and countervailing duty provisions. There we have emphasized the abridgement of the importer's rights because he is the one who is assessed additional duties where there is an affirmative dumping or countervailing duty determination. Further, the importer's right to contest any such assessment has a common law basis. We have not referred to the petitioners in these proceedings or interested parties because theirs are statutory rights which, while obtained after years of efforts, may be withdrawn by the Congress. However, the Congress here is not limiting those rights as to all petitioners (American manufacturers, producers, or wholesalers; labor unions; consumers, etc.,) but only as to petitioners complaining about certain merchandise - that is merchandise from Canada.[23] Thus an American company facing unfair competition from dumped or subsidized goods from Canada will not be able to receive the full protection of our laws with regard to such merchandise which a competitor might be able to obtain on similar goods being dumped or subsidized from another country. Also an importer from Canada would be denied judicial review of an ITA or ITC determination while a competitor importing similar merchandise from another country would have recourse to such review.[24] Another example of disparity would be where the ITA or ITC investigate a product which is imported from Canada and other countries. The final determination as to injury, which may well be cumulative determination in these kinds of cases, would be bifuricated with the Canadian aspects going to the bi-national panel and the other country aspects to the courts of the United

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[21] Thomas v. Union Carbide Agric. Products Co., 473 U.S. at 559 (Brennan, J. concurring).

[22] See generally Glidden Co. v. Zdanok, 370 U.S. 530, 82 S. Ct. 1459, 7 L.Ed. 2d 761, reh'g. denied, 371 U.S. 854, 83 S. Ct. 14, 9 L.Ed. 2d 93 (1962).

[23] Although it is already assumed that similar limitations will be sought by Israel with regard to its FTA with the U.S., and by Mexico in its FTA negotiations.

[24] A simple illustration of this is as follows: A and B are both in the business of importing product C. A imports product C from Canada. B imports product C from France. If B has any grievances over product C in reference to antidumping or countervailing duties, he will be able to seek redress for his grievances in the Court of International Trade simply because he imported product C from France. Since A imported product C from Canada, A will be precluded from asserting any similar claims in the Court of International Trade. Except for the origin of where they import product C from, A and B should be considered similarly situated.

States.[25] We think it not only unequal but unworkable.

This disparity in treatment obviously raises questions as to the guarantee of equal protection of the laws contained in the 14th Amendment to the Constitution, the tenets of which have been implied into the guarantees of the Due Process Clause of the Fifth Amendment.[26]

6. What is Being "Protected" From Judicial Review Are Private Acts Not State Action.

A number of commentators in support of the FTA speak of the right of the President to conduct our foreign relations and of Congress to regulate foreign commerce and seek to clothe the deprivation of judicial review with these undeniable Executive and Legislative powers. But a close examination of the protection afforded by our dumping and countervailing duty laws is not protection from foreign states but protection from unfair competition by foreign exporters who sell their products to the United States at less than fair market value (*i.e.*, the price at which the merchandise is sold in the home market) and are thus dumping their merchandise in the United States to the injury of American manufacturers, producers or wholesalers; or from foreign exporters who avail themselves of subsidies by their Government of a kind which are contrary to the Subsidies Agreement in the GATT and are injuring American manufacturers, producers or wholesalers, or, similarly in dumping cases, hindering the establishment of such American companies.[27] A dumping finding is directed at *companies* not countries!

Certainly an importer or exporter should have the opportunity to show that there was no dumping under our laws or that his supplier was not dumping, or that the computation of the margin was arrived at not according to the statute. Likewise, the American petitioner should be able to show that a negative determination as to sales at less than fair market value or on injury was contrary to the statute.

7. There is No Precedent for A Bi-national Panel Depriving A Citizen of a Suit Against the United States In The Application of Domestic Legislation

The proposed Bi-national Disputes Settlement Panel in the Canada-United States FTA is not only without precedent but is an effort to lessen the right of judicial review in the Customs area at the least, if not elsewhere. Even those who most desire the FTA, (and this Association is not opposed to a free trade agreement with Canada), are concerned with the danger inherent in the adoption of such a device. For example, the International Trade Policy and the International Investment Committees of the National Association of Manufacturers in a Statement adopted on November 18, 1987, said "...NAM is concerned, as a matter of principle, about the adverse effect that the bi-national panels of the AD/CVD dispute settlement mechanism will have on U.S. sovereignty, on the administration of U.S. trade law and on the ability of U.S. petitioners to secure judicial review. We accept the proposal for these panels in the context of the Canadian agreement, but we would oppose extending the use of such panels or similar techniques to other trade agreements."

Some proponents of the provision for the bi-national panel point to international claims and boundary commissions as precedent for the proposed action here. There is no legal or factual basis to that contention. Obtaining a fund from a foreign government to settle claims of our citizens against that government without recourse to our courts, as in Dames & Moore v. Regan, 453 U.S. 654 (1981), is not analogous to depriving an importer of the right to challenge an assessment of dumping or countervailing duties in our courts. Under the doctrine of sovereign immunity, our courts have no power to grant relief in suits of our citizens against foreign governments. Even where there are assets of that government in the United States, they may not be attached unless they are a part of commercial activity not related to governmental functions and a claim of immunity is not recognized by the State Department or by the Courts.[28] Claims commissions are established to allocate among claimants a fund received from a foreign government. The Foreign Claims Settlement Commission is also not a precedent as the Commission was disposing of, pursuant to international law, claims by U.S. citizens against former foreign (enemy) Government action which, if proven, were paid out of assets of the foreign Government. There have been numerous bi-national claims commissions in our history[29] but not one of them was depriving U.S. citizens from obtaining judicial review in instances where the U.S. Government was seeking to collect additional duties. Those were cases where our Government sought to assist our citizens in realizing their claims against foreign governments, claims which without our intervention might never have been honored.

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[25] *See*, *e.g.*, *Certain Fresh Cut Flowers from Canada, Chile, Columbia, Costa Rica, Ecuador, Israel, and the Netherlands*, USITC Pub. 1956 (March 1987), at 15-20 (Imports of like flowers from all investigated countries cumulated); *Certain Brass Sheet and Strip from Brazil, Canada and the Republic of Korea*, USITC Pub. 1930 (Dec. 1986) at 12 (Imports from Canada, Brazil, France, Italy, S. Korea, Sweden, and West Germany cumulated); *Oil Country Tubular Goods from Canada and Taiwan*, USITC Pub. 1865 (June 1986) at 8 (Imports of OCTG from Canada cumulated with OCTG from Israel in the CVD case, and with Israel and Taiwan in the antidumping case); *Iron Construction Castings from Canada*, USITC Pub. 1811 (Feb. 1986) (Imports from Canada cumulated with those from Brazil, India, and the People's Republic of China).

[26] *See* *Weinberger* v. *Wiesenfeld*, 420 U.S. 636, 43 L.Ed. 2d 514 (1975) holding that the gender-based distinctions provided for by 42 USC §402(g) of the Social Security Act, which afforded less protection for the survival of female wage earners than for male wage earners, violate the right to equal protection of the laws under the due process clause of the Fifth Amendment.

[27] *See* 19 U.S.C.A. 1671-1677.

Likewise, the settlement of boundary disputes between nations by a bi-national Boundary Commission or the International Court of Justice is again not analogous. Such disputes are patently between nations and handled diplomatically or in international fora.

We are not aware of any precedent where the United States has statutorily agreed to force its citizens or those entitled to the protection of its laws to go to a bi-national panel to construe United States laws and Federal agencies' actions with the ultimate determination of that citizen's rights or obligations under United States statutes.

VI. THE PROPOSAL FOR A BI-NATIONAL PANEL IS UNNECESSARY

There is no reason in policy why a bi-national panel should be created. The countervailing duty and antidumping duty statutes contained in Title VII of the Tariff Act of 1930 already contain provisions for the settlement of disputes by agreement or undertakings. If the Canadian Government and the United States Executive Branch are interested in settling these matters in a rational political manner, rather than engaging in full administrative proceedings and Court review, it is these provisions which should be expanded. They can be used to suspend or end antidumping and countervailing duty cases. If, during the progress of the matter at the administrative level, the Governments can work out an agreement, then the matter will end administratively. It is these provisions which the Administration should revamp to answer these special circumstances.

CONCLUSION

The United States is being asked to turn a new corner, to travel down a new road but we do not think we should because of the barrier to that travel in the Constitutional guarantees of due process, equal protection and access to our courts. It is also bad policy and full of risks for the future.

For the reasons stated above, CITBA urges that the provision in the initialed agreement regarding a Canadian-United States free trade area which provides for the withdrawal of jurisdiction in countervailing and antidumping duty matters from the Courts of the United States not be agreed to by Congress.

Respectfully submitted,

THE CUSTOMS AND INTERNATIONAL
TRADE BAR ASSOCIATION

By: David O. Elliott, President
Andrew P. Vance,
Chairman, Trial and Appellate Committee

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[28] See Alfred Dunhill, Inc. v. Republic of Cuba, 425 U.S. 682, 48 L.Ed. 2d 301, 96 S.Ct. 1854 (1976), and cases cited therein; See also National City Bank v. Republic of China, 348 U.S. 356, 99 L.Ed. 389, 75 S.Ct. 423, reh'g. denied, 349 U.S. 913, 75 S.Ct. 598, 99 L.Ed. 1247 (1955).

[29] American-Mexican, American-Turkish are but a few examples.

Chairman GIBBONS. Mr. Baker.

STATEMENT OF STEWART ABERCROMBIE BAKER, WASHINGTON, DC, ACCOMPANIED BY CHRISTIAN BARTHOLOMEW, WASHINGTON, DC

Mr. BAKER. Thank you, Mr. Chairman.

I am here with Christian Bartholomew, who did a good deal of the research in my statement.

I would like to get right to the heart of what——

Chairman GIBBONS. We will put your entire statement in the record, because I want the record to show that we have considered your statements and I want to assure all of you that I will thoroughly read your statements.

Mr. BAKER. I think Christian would be very disappointed if it didn't end up in the record.

The heart of the issue is whether the Constitution prohibits Congress from cutting off judicial review. That is a question you have to unpack a little to answer. I think it is a different answer for statutory and constitutional claims, that is to say, a different answer when someone is asserting that the agency has violated the statute from the answer you might get when the assertion is that the agency or Congress itself has violated the Constitution.

As to statutory claims, what Congress gives, Congress can take away. Congress has created the right to anti-dumping relief and to countervailing duty relief. If Congress chooses to abolish it tomorrow, it can. If Congress chooses to limit the right or remedy, it can do that as well.

That is a public rights doctrine that was established in international trade cases as early as the 1920s in the *Bakelite* case, and even the most recent Supreme Court decisions on article III that set out some kinds of cases that have to go to article III courts, go out of their way to say *Bakelite* is upheld, public rights doctrine is upheld.

The Constitution, I think, raises a different question. Congress doesn't have the authority to confer constitutional rights on people or to take them away, and if Congress were to enact a law that took away the remedy for constitutional rights, it would raise serious constitutional questions. So taking away the right of judicial review when someone is arguing the unconstitutionality of the Government's actions raises a tough constitutional question. It is a constitutional question the Supreme Court probably has had before it dozens of times and has never given us an answer to. It has never said firmly that Congress cannot cut off judicial review, and it has never said firmly that Congress can. That would seem to leave you with a lot of authority in this area.

I think you cannot ignore, however, in deciding how to exercise that authority, the way the Court has managed to dodge answering that question. It has managed to do it because whenever it is faced with a law that seems to cut off judicial review of constitutional questions, it says "If we were to apply this law as it is written, we would not be able to review a certain constitutional question. But a cut-off of that kind would raise serious constitutional questions, and we will not read the statute that way." They do not read the statute as it is written, in essence, and they have bulldozed their way through the ambiguities that they find in the statute, seized the constitutional issues and decided them.

The lower courts have gotten the hint and that is how they handle these questions, as well. That is a broad hint that if they ever got a statute that firmly cut off judicial review of constitutional issues, they would strike it down. But they haven't said that, and they probably will not in this case. I don't think they will reach the ultimate question in this case.

If you look at what the free trade agreement does as it is written now, as to statutory claims it is quite clear. It says there will be no judicial review, that the panel will decide statutory claims arising out of the countervailing and dumping laws.

Since Congress created those laws and created the remedies, there is no problem with putting those claims before a new panel.

As to constitutional claims, when you read the agreement you come away a little puzzled. It seems to cut off all judicial review of final determinations, but at the same time it doesn't give the panel authority to decide any constitutional questions except perhaps in due process claims.

If you got a first-year law student up here and asked him "What does that mean? How do you raise constitutional claims?" I think the right answer as a matter of statutory construction is that you can't raise constitutional claims anywhere.

If there is anything guaranteed in constitutional law, it is that that answer won't fly in front of the Supreme Court. The Court is going to say "we need a clearer indication from Congress than this before concluding that they intend to oust us from jurisdiction over these constitutional claims."

So the most likely result is that they will again bulldoze their way through the language of the agreement, take jurisdiction over the constitutional claims and resolve them.

In a sense, that solves the constitutional problems. You could simply take the free trade agreement, write it up in language that was as ambiguous as the agreement about constitutional claims, and throw it into the lap of the courts and hope that they would apply their usual standards, not read it as it is written but read it in light of the need to have constitutional review.

In my view, that would not be a responsible way to approach the problem. I don't think it is a good idea to say to the courts, "well, this is probably unconstitutional as we wrote it, but you can fix it." You are forcing them to stand on their heads as they construe the statute.

And even more of a problem, as a practical matter, you are handing over that bulldozer of judicial review not to Canada or the United States Government or to Congress, you are handing it over to the first party that is mad enough about how they were treated in a Canadian case to want to overturn the whole agreement.

There is no provision for where they should go to get judicial review, but I am willing to bet that if somebody is mad enough they are not going to wait meekly while the panel reviews their case and then go to the Court of International Trade and ask them to review the constitutional questions.

If the lumber industry loses a case against Canada, I wouldn't be surprised if they decided to go to the Federal District Court in Oregon, to raise their claim there, and to ask for an injunction against naming a panel before the panel even gets off the ground. In other words, they can forum shop to find a judge who doesn't know much about trade but knows a lot about lumber and is mad about what the agency did to the lumber industry. That possibility, it seems to me, is a real one, and it is a risk.

Once that judge has the case before him, if he doesn't have any guidance from Congress about how these issues are going to get resolved, he is going to say, "if I don't review these constitutional issues nobody will, and therefore the Supreme Court teaches me to bulldoze right through, take the case and decide it."

Once he has decided to do that, the potato growers are going to use his precedent to go into the northern district of Maine with their claims. You will have people in district courts all around the country shopping for the most favorable forum as soon as they can come up with a constitutional claim.

It seems to me the most appropriate way to handle that is to actually write a provision about how you get constitutional review, and to make it a responsible one that requires exhaustion of the panel process, that discourages frivolous claims with a variety of procedural devices, and that picks one court, say perhaps the Court of International Trade or the Federal circuit, and says constitutional review will occur here. If the Government loses or the free trade agreement is overturned, you can provide for appeal to the U.S. Supreme Court. Something orderly that prevents forum shopping would be useful.

There is a risk to doing that, and I think we have to face it. I know the administration is very concerned about it. The risk is that the Canadian Government and the Canadian public are going to see that as welshing on the deal that we entered into, as providing the kind of judicial review that they thought had been given up by the United States in negotiations.

I think in light of the ambiguity about how constitutional claims are going to be handled in the agreement, they really don't have much of a beef. But that isn't necessarily going to prevent politicians up there, or the public, from saying perhaps that the Canadian Government was snookered in the negotiations. That is a real risk.

I would hope that, with sufficient education and a careful explanation of the dangers of forum shopping, that the Canadian Government would see this not as a welshing, but as effectuating an orderly procedure for judicial review and for the panels.

Whether to provide specifically for review of constitutional claims is a question that in the end you will have to answer. If I were deciding it, I would decide in favor of orderly review and hope that I could persuade the Canadians that it was done in good faith.

Chairman GIBBONS. Thank you.

[The statement of Mr. Baker follows:]

THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

HEARINGS ON THE CANADA - UNITED STATES FREE TRADE AGREEMENT:

STATEMENT OF STEWART ABERCROMBIE BAKER
FEBRUARY 26, 1988

Mr. Chairman, I am here today to testify about the constitutional issues raised by one part of the Canada - United States - Free Trade Agreement ("FTA"). The provision that has sparked a constitutional debate substitutes review by a binational panel for judicial review in anti-dumping and countervailing duty cases against Canadian imports. Because my practice has been a mix of constitutional law and international trade, this issue holds a special interest for me; I am here on behalf of myself, and not on behalf of a client, my law firm, or any other organization.

INTRODUCTION

I begin with the proposition that judicial review of agency action is a good thing, and that cutting off judicial review ordinarily is not.

The courts seem to agree. Although it used to be presumed that unless Congress provided for review an agency's action was unreviewable, today reviewability is the rule and not the exception.1/

Congress too has a large stake in judicial review. Judicial review ensures that agencies do not stray too far from the path Congress has defined by statute, no matter how diplomatically or politically expedient it may be to bend the rules.

Federal agencies have accepted judicial review, it is safe to say, with something less than enthusiasm. They naturally prefer more rather than less discretion. In the trade area, in particular, the evolution of judicial review has been the result of a long struggle. Now that it is in place, however, I think that even most trade administrators would agree that judicial review has improved their agencies' decision-making.

With that as background, the proposal to replace judicial review of anti-dumping and countervailing duty cases with review by a binational panel is hard to be enthusiastic about, at least when viewed in isolation. No one has made the case that the source of Canadian dissatisfaction with U.S. trade law stems from the inadequacies of judicial review as it now stands.2/ And it would be entirely improper to remove judicial review in order to free the agencies from the requirement that they follow the law as Congress wrote it. It may well be a good idea to introduce more discretion into anti-dumping and countervailing duty law to reflect the delicacy of applying these statutes against a partner in a free trade agreement. But such a change should be made openly and explicitly, not under the counter.

1/ See, e.g., 5 K. Davis, Administrative Law § 28.1 at 254 (1984).

2/ Indeed, according to a statement provided by the Customs and International Trade Bar Association ("CITBA"), it appears that Canadian importers prevail more often than not upon review. CITBA Statement, Annex A (December 4, 1987).

Nonetheless, it is equally hard to avoid the political realities here. By all accounts, this arrangement was the minimum Canada would accept, and it is a part of the FTA to which Canada has attached a great deal of importance. Ultimately then, the question is not whether the binational review process is a good or bad idea in isolation, but whether it is a good or bad idea in the context of the proposed FTA. Put simply, does this proposal raise such serious concerns that we should throw out the FTA?

I think not. The benefits of the FTA outweigh the limited cost of replacing judicial review with panel review. Free trade is likely to be good for both countries, and the substitution of a panel for judicial review will not last long; eventually there is likely to be a broader agreement about handling anti-dumping and countervailing duty cases. If the roster of panel members is chosen in a responsible way, and panels cannot be "stacked," panel review may well deter the agencies from veering from what the law requires. In short, I believe the FTA should be approved, panel review and all.

I would not reach this conclusion if I believed that the binational panel process was constitutionally infirm. That brings me to the heart of my testimony today.

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There are a number of potential constitutional objections that can be made to the binational review process, but only two merit serious consideration. The first -- that Congress cannot take cases away from the courts and give them to nonlawyers to decide -- has considerable intuitive appeal but limited support in the case law of the U.S. Supreme Court. The second -- that the panel rulings cannot be binding under U.S. law unless the President appoints all the members -- has a surprising degree of precedent behind it, however lacking the argument may be in practical appeal.

1. REPLACING JUDICIAL REVIEW WITH A BINATIONAL PANEL

It is not unreasonable to assume that there are limits on the authority of Congress to take a case away from the courts and to assign it to some other nonjudicial body. In fact, though, the courts have been very reluctant to impose limits on congressional authority over the jurisdiction of the federal courts. The tone for future decisions was set during the Reconstruction. Even after the end of the Civil War, the military held some civilians for trial. One of them, William McCardle, was a newspaper editor charged with writing "incendiary" articles. He sought his freedom through a habeas corpus petition. Relief was denied by the lower courts but the Supreme Court accepted his appeal. Fearing that the Court was ready to set McCardle free, Congress quickly passed a law divesting the Court of its power to hear habeas corpus appeals. If ever there was a case in which the Court could be expected to set limits on the authority of Congress to define the federal courts' jurisdiction, this was it. Instead, the Court noted blandly that Congress has "the power to make exceptions to the appellate jurisdiction of this court," and dismissed the case.[3]

The authority of Congress to take cases away from the lower federal courts has also been construed broadly in a string of precedents dating from the beginnings of the Republic, only briefly interrupted by Justice Story's opinion in Martin v. Hunter's Lessee.[4] Reasoning from the premise that Congress was not constitutionally required to create any lower federal courts, the courts have consistently concluded that Congress is free to limit the lower federal courts' jurisdiction more or less as it pleases. This line of reasoning emerged as early as 1799 when Justice Chase declared, in response to the suggestion that the federal courts derive their authority directly from the Constitution, that:

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[3] Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868).

> [t]he political truth is, that the disposal of the judicial power (except in a few specified instances [enumerated in article III, § 2]), belongs to Congress. If Congress has given the power to this court, we possess it, not otherwise; and if Congress has not given the power to us, or to any other court, it still remains at the legislative disposal.

Turner v. The President, Directors, and Company of the Bank of North America, 1 L.Ed. 718, 719 n.1 (1799).

Seventeen years later, in Martin v. Hunter's Lessee, Justice Story tried to swim against the tide, arguing that the federal courts must be given jurisdiction over all disputes listed in Article III of the Constitution. But as the Supreme Court stated recently, his view "did not survive later cases." Palmore v. United States, 411 U.S. 389, 401, n.9 (1972). See also Lauf v. Shinner & Co., 303 U.S. 315, 329-30 (1938) ("[t]here can be no question of the power of Congress . . . to define and limit the jurisdiction of the inferior courts of the United States").

These cases are still good law, but it would be wrong to ignore recent trends. The courts have begun to put new limits on what Congress can do when it defines the jurisdiction of federal courts under Article III. One of these limits, epitomized by Northern Pipeline Co.v. Marathon Pipe Line Co., 458 U.S. 50 (1982), raises no serious constitutional problems for the FTA. A second trend is the increasing number of broad hints courts have made suggesting that the Fifth Amendment's due process clause may require some judicial review of constitutional claims. This trend may have an effect on the binational panel process, but it does not render the process unconstitutional.

a. Northern Pipeline

Let me deal with the easier of the two trends first. In Northern Pipeline Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982), a splintered Supreme Court declared that certain disputes cannot be resolved by bankruptcy judges, who do not have life tenure and are thus not Article III judges. Since the binational panel will not be an "Article III" court, Northern Pipeline could be read as restricting the kinds of issues that can go to the panel.

But the Northern Pipeline plurality expressly recognized that Article III courts have no monopoly on resolving disputes over "public rights." And the Court cited international trade cases as classic examples of "public rights" disputes: "[t]he court has treated as a matter of 'public right' an essentially adversary proceeding to invoke tariff protections against a competitor." Thomas v. Union Carbide Agricultural Products Co., 105 S.Ct. 3325, 3337 (1985), citing Ex parte Bakelite Corp., 279 U.S. 438, 447 (1929) (allowing non-Article III adjudication of trade cases under the predecessor of today's § 337 of the Trade Act of 1930). Even read broadly, then, Northern Pipeline has no impact on anti-dumping and countervailing duty cases. In fact, Northern Pipeline has not been read broadly; later cases have narrowed the case dramatically, suggesting that the only disputes that must be reserved for an Article III court are "traditional contract action[s] arising under state law." *Thomas v. Union Carbide Agricultural Products Co.*, 105 S. Ct. 3325, 3334-35 (1985); *Commodity Futures Trading Commission v. Schor*, 106 S. Ct. 3245 (1986).

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[4] 1 Wheat. 304, 4 L.Ed. 97 (1816).

b. *Constitutional Review*

i. The second trend is a growing judicial consensus that Congress cannot use its Article III powers to deprive a litigant of all judicial review when the issue is whether the government has violated his constitutional rights. I do not want to over-emphasize the strength of this trend. The Supreme Court has never held unequivocally that Congress may -- or may not -- foreclose all judicial review of the constitutionality of a congressional enactment. But this lack of conclusive precedent is misleading. Recently, the Supreme Court has managed to avoid striking down congressional withdrawals of jurisdiction mainly by ignoring them. Whenever a statute seems to withdraw jurisdiction over constitutional claims, the Court has cited the serious constitutional concerns that such a withdrawal would raise and then construed the statute to permit review. *See*, *e.g.*, *Johnson v. Robison*, 415 U.S. 361, 366 (1984); *Bowen v. Michigan Academy of Family Physicians*, 106 S. Ct. 2133, 2141 & n.12 (1986).

These sometimes unlikely "interpretations" of jurisdictional statutes are best understood as broad hints that any other interpretation would be unconstitutional. And at least one lower court has already leaped to declare what the Supreme Court has only hinted. In *Bartlett v. Bowen*, 816 F.2d 695, 704 (D.C. Cir. 1987), the D.C. Circuit said, over Judge Bork's dissent, that

> a statutory provision precluding *all* judicial review of constitutional issues removes from the courts an essential judicial function under our implied constitutional mandate of separation of powers, and deprives an individual of an independent forum for the adjudication of a claim of constitutional right. We have little doubt that [this] 'would be an unconstitutional' infringement of due process.

Id. at 703 (citation omitted). *See also* *Battaglia v. General Motors Corp.*, 169 F.2d 254, 257 (2d Cir. 1948) (the congressional exercise of plenary power in this area must not "deprive any person of life, liberty, or property without due process of law or to take private property without just compensation"), *cert. denied*, 335 U.S. 887 (1948).

ii. The Supreme Court's broad hints and the D.C. Circuit's declaration pose an obvious question: How will constitutional claims be treated under the binational panel system? On this issue the FTA is strangely silent. The panel is given authority to decide whether the agency determinations are "in accordance with the anti-dumping or countervailing duty law of the importing Party." Articles 1904(2) & 1911. Nothing is said about letting the panel decide whether agency determinations are in accordance with the importing Party's Constitution, apart from an injunction that the panel must apply "general legal principles" that include "due process." Articles 1904(3) & 1911.

The negotiators seem to have flinched from letting Canadians hand down binding interpretations of the U.S. Constitution (and *vice versa*). One reasonable interpretation of this gap is that the courts retain jurisdiction over constitutional issues. And, as noted above, where there is doubt, the courts will go to extreme lengths to find that a constitutional claimant still has an Article III forum. *Cf.* *Robison* and *Bowen*, *supra*.

The end result, then, is that the Article III and due process concerns about the FTA can be eliminated as long as the implementing language leaves open the possibility that parties in anti-dumping and countervailing duty cases may still go to court to complain that the agencies have acted unconstitutionally. Given the importance of the binational panel process to Canada, however, this solution presents some delicate practical concerns, which I will address briefly at the end of my testimony.

2. APPOINTMENT OF THE PANEL MEMBERS

An entirely separate constitutional issue is raised by the way in which the binational panel will be named. It is this issue -- and not the question of divesting the courts of their jurisdiction -- that has caused the most debate within the Reagan Administration. At the last moment, the U.S. Department of Justice challenged the proposal, claiming that the Constitution required that the President appoint all of the panel members. The Justice Department relied on the appointments clause of the U.S. Constitution:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointments of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

The clause was construed by the Supreme Court in _Buckley v. Valeo_, 424 U.S. 1 (1976). _Buckley_ involved a challenge to the Federal Elections Commission ("FEC"). The FEC was charged with "primary and substantial responsibility for administering and enforcing the [Federal Election Campaign] Act." _Id_. at 109. Apart from _ex officio_ members, two of its members were to be appointed by the president _pro tempore_ of the Senate, two by the Speaker of the House, and two by the President.

The Court held that these provisions violated the part of the appointments clause that requires that the President appoint all "Officers of the United States," a term the Court construed broadly:

> [T]he term 'Officers of the United States' as used in Art. II, defined to include 'all persons who can be said to hold an office under the government' . . . is a term intended to have substantive meaning. We think its fair import is that _any appointee exercising significant authority pursuant to the laws of the United States is an 'Officer of the United States,' and must, therefore, be appointed in the manner prescribed [by the appointments clause]_.

_Id_. at 125-26 (emphasis added).

Relying on _Buckley_, the Justice Department objected to a binational panel which would "exercise significant authority pursuant to the laws of the United States" but whose members would not be appointed by the President.

This is not an unreasonable reading of Buckley but it leads to a thoroughly unreasonable result. No country in the world will agree to arbitrate disputes with the United States if the United States insists on appointing all of the arbitrators. In fact, from the eighteenth-century Jay Treaty to the 1981 Algiers Accords establishing the Iran-United States Claims Tribunal, the United States has repeatedly entered into binding arbitration agreements allowing each party to name its own arbitrators; none of these agreements has ever been challenged as unconstitutional under the appointments clause. See, e.g., J. Simpson & H. Fox, International Arbitration: Law and Practice 1 (1959).

Faced with the choice between a literal reading of Buckley and nearly 200 years of U.S. diplomatic practice, the courts may well be reluctant to apply Buckley strictly. Aware of this, the U.S. negotiators obtained language in the FTA that may give courts a way to avoid Buckley's requirements. The FTA provides that for purposes of the panel's review, the Parties' dumping and countervailing duty laws "are incorporated into this Agreement." Agreement, article 1904(2). As a result of this provision, it may be argued, the panel members will exercise their authority pursuant to an international agreement and not simply pursuant to U.S. or Canadian law.

This is by no means an irrefutable interpretation of Buckley, but it is strengthened by one of the few cases to interpret Buckley's holding in this area. In Seattle Master Builders v. Pacific Northwest Electric Power and Conservation Planning Council, 786 F.2d 1359 (9th Cir. 1986), a federal appeals court considered a challenge to the constitutional validity of the Pacific Northwest Electric Power and Conservation Planning Council ("Council"). The Council, composed of members appointed by the governors of four states, was charged with establishing an energy conservation plan for the geographic region served by an agency of the United States Department of Energy. The Council operated pursuant to legislation enacted by the four member states, as well as Congress. In response to an appointments clause challenge, the Ninth Circuit held that the Council's composition was constitutional:

> The Council members do not perform their duties 'pursuant to laws of the United States.' Rather, the Council members perform their duties pursuant to a compact which requires both state legislation and congressional approval. Without substantive state legislation, there would be no Council and no Council members to appoint.

Id. at 1365 (citations omitted).

In short, an appointments clause concern can probably be cured if Congress makes plain its intent that the panels act pursuant to the FTA and not just U.S. law.

3. IMPLEMENTING THE PANEL REVIEW PROCEDURE

Let me return briefly to the question of what I think should be done by way of implementing legislation to ease any constitutional concerns.

a. The hardest questions are raised by the possibility of a broad denial of judicial review. It may well be possible to avoid all constitutional problems simply by doing nothing about judicial review of constitutional claims. As long as the implementing legislation does not unequivocally cut off review of such claims, the courts will likely move Heaven and Earth to find that they still have jurisdiction over those claims.

This may be preferable from a diplomatic point of view. The Canadian negotiators surely knew that the FTA's ambiguity would mean judicial review of at least some constitutional claims. But if elaborate provisions are made for such review, there is a risk that the Canadian public will suspect that the U.S. is smuggling judicial review of panel decisions into the FTA. After all, Canadians may say, almost everything in the U.S. seems to end up in court as a constitutional question.

The trouble with the "do nothing" approach is that it isn't responsible, either from the point of view of constitutional law or as a matter of orderly procedure. If the implementing law says nothing about how to get constitutional review, then the decision about where to bring a challenge will be left to the first lawyer who wants to overturn the binational panel procedure. That lawyer will naturally choose the route most likely to be disruptive. He may seek to enjoin the naming of a panel even before review begins. He may bring the challenge in an inappropriate court (a distant federal district court, for example). And because the statute says nothing about where review is proper, the court chosen by the plaintiff is likely to take the case. Worse yet, once this trail has been blazed, it will be followed by every disappointed litigant who can cast his complaint in constitutional terms.

While I see the risks in terms of Canadian perceptions, I think the more responsible course is to provide expressly for judicial review of constitutional claims. Indeed, Canada should prefer this route because it would allow Congress to specify one court to hear all such claims and to make rules that would discourage meritless constitutional claims made merely for the sake of delay. For example, Congress could forbid injunctive relief (other than a stay of liquidation) against the agencies, at least until all of the government's appeals have been completed. Congress could also require that parties try the panel before condemning it, allowing them to raise constitutional claims only after the panel has completed its review and returned the case to the agencies.

b. The appointments clause issue raises no such troubling policy choices. The only question is how to reinforce the reasoning of the Ninth Circuit in Seattle Master Builders. The agreement itself has made a beginning on this, indicating that the panel will be exercising authority directly under the Free Trade Agreement. The implementing legislation should maintain the distinction between the role of the panels, which apply standards set by the Agreement, and the role of the courts, which issue binding interpretations of U.S. statutes. While nothing is guaranteed in constitutional litigation, maintaining this distinction should give courts a legal rationale for doing what good policy requires.

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Mr. Chairman, that concludes my testimony. I will be delighted to answer any questions the Committee may have.

Questions and comments may
be directed to Mr. Baker at
Steptoe & Johnson
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202-429-6478

Chairman GIBBONS. In addition to the Ways and Means Committee reviewing this matter, the Judiciary Committee will review it.

I want to perhaps make a self-serving declaration here. I made an A in U.S. constitutional law in law school. I am very familiar with many of the arguments made here and that will be made when this thing goes to the U.S. Supreme Court, and I am convinced that the process here is constitutional.

It is not one entered into lightly by me. I am sort of the author of all this and, when the agreement began to bog down, I suggested that this was perhaps a way in which we can finally reach agreement with the Canadians. So there is pride of authorship here, but it is not pride that I take without worrying about it, because it is one of the oldest problems that we have in our trade relationship.

I have since read everything that you have said to me about this and will continue to read about it. My inquisitiveness as a lawyer intrigues me when I do all this, and perhaps there are some ways that the language that is finally submitted to us can include the types of materials that deal with what worry us all as lawyers.

Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

I have nothing to add. I have read the testimony. I think it is certainly a point of view we want to consider. I guess some of it will be decided by the courts. But we want to make sure that we take into consideration such facets as we go through the implementing legislation, and I thank you for presenting your views.

Mr. VANCE. If I could comment, one of the things that concerns our organization particularly is the seeming failure to recognize what we are dealing here with is not just a statutory right. There was a statutory right given to sue the United States in 1890, and under the antidumping law, but there is a common law right which was just recently recognized even by the Court of International Trade in a case involving the right to a jury trial, in that there is a right of any citizen being assessed duties, taxes by his government, to have recourse to a court of law to determine whether or not he is properly being assessed duties.

This is the right which we are saying even if you take away the statutory right to sue the sovereign, what about the common law right? Can you really deprive constitutionally, under the due process clause, the citizen's opportunity to challenge the government's taking away of his property? And to do it in an unequal way, you are taking it away only with regard to merchandise exported from Canada, and you are giving an importer's competitors or the American manufacturer, petitioner's competitors, with merchandise from other countries still having the right to use our courts.

The policy questions involved in that which Mr. Elliott touched upon are something that Congress finally recognized in 1979, giving rights to American manufacturers and all those——

Chairman GIBBONS. I was here in 1979 and was a very important actor in that entire provision. We put in the judicial review at that time to help get that enacted into law. It was a political decision on the part of the Congress to add it at that time. It did not necessarily reflect our belief that it was necessary to do it because of constitutional purposes.

Mr. VANCE. No, I don't believe it was.

Chairman GIBBONS. We did it for political purposes and I remember that very distinctly.

Mr. SCHULZE. Mr. Chairman, if I may, you remember that one of my concerns through this entire process was the dispute settlement mechanism, and I wish that we had had the opportunity to spend more time on dispute settlement mechanisms before the fact, rather than after the fact.

I expressed that concern to the chairman several times and also to our negotiators, and I do have some concerns with the way we ended up. I hope it works out, but I still have those concerns.

Mr. ELLIOTT. Congressman Schulze, I heard you earlier speak about the habit of the United States, in negotiating multilateral trade negotiations, to bring our sensibilities down to the lowest common level of those with whom we are negotiating.

I can't think of a better example than this. This does involve the rights to use judicial review of citizens of the United States. Mr. Vance said it is not very hard to document—it was at the time of the founding of our republic, and we have had that right ever since. I find this a great example of that.

In 1956—since the Judiciary Committee is going to hear it—Senate and House Judiciary said the Customs Court handled cases which very properly come within the judicial power of the United States as set forth in article III, and as we know, article III vests that judicial power in the courts of the United States.

I think that what is being attempted here is a clear removal of a case or controversy. The U.S. Supreme Court in the *Glidden* case said the matters coming in customs litigation with assessment on an import citizen are cases or controversies within the understanding of the Constitution of the United States.

So both Judiciary Committees of Congress spoke in 1956 saying this is within the judicial power of the United States and the Supreme Court blessed that by its analysis in *Glidden Company.* I find it very difficult to see why this doesn't raise a very serious question of constitutionality.

The other part of it, of course, is the wisdom of it, the policy of it. As I understand it, not only do we not have a separation here, we have the Executive assessing duty, the Executive creating the panel, and that panel can include people who practice in the area, people who practice before these very agencies, the Department of Commerce and the Tariff Commission. They will then sit and impartially judge someone else's problems before those agencies. That goes to the very heart of why the judicial power of this United States, as Justice Brennan said very recently in *Northern Pipeline,*

> In sum, our Constitution unambiguously enunciates a fundamental principle that judicial power of the United States must be reposed in an independent judiciary. It commands that the independence of the judiciary be jealously guarded, and it provides clear institutional protections for that independence.

I think we have to listen to that. I think we have here the beginning, in terms of quantity, maybe not a lot of issues. And then Mexico and then where, and then how about tax? Where does it stop? At any rate, I think that rather than have the courts have to settle everything in this country, Congress has a good time to look at this now, and the thumbs-up/thumbs-down is a very difficult proposition.

I hope we don't, for the sake of expediency, hide some of these hard questions.

Mr. VANCE. Mr. Chairman, I know you are interested in alternatives, so we propose two alternatives we have in our paper. I understand one of the concerns was a Canadian's statement that court procedures took too long, so you put a time limit on the panel's procedures, which it seems to me you could enact a statutory preference for these cases in the courts and put time limits on the courts, or the—what I also state as an aside, who is going to enforce the time limits on the panels, if there is no court you can go to anywhere else to say, "Hey, Panel, you are supposed to come out with something"? We know what has happened to statutory time limits administratively. They are not met, and no one can enforce them.

The other alternative is make these panels voluntary. In other words, if the parties agree to them and want to accept the panel and have their decisions final and biding, fine. The point is the courts ought to be open to the citizens who want to get to them.

Chairman GIBBONS. Well, I thank you for your suggestions. We will not change our agreement with Canada, the spirit of it. I am sure the very fine and hallowed halls of the Supreme Court over here will ring with these arguments one day, and their decision will be final.

But I am confident that the procedure we have set up here is constitutional. It was not entered into lightly. It was not a spur-of-the-moment consideration. It is one in which there was a lot of deliberation and research.

With that, I would like to close the meeting for today and announce the hearings on this Canadian agreement will begin again Monday right in this very room. You are welcome to attend and participate. If for any reason you feel you have been excluded from these hearings, please let the staff know or let me know, and we will try to incorporate you in future hearings.

Thank you very much.

[Whereupon, at 12:40 p.m., the subcommittee was adjourned, to reconvene on Monday, February 29, 1988.]

UNITED STATES-CANADA FREE TRADE AGREEMENT

MONDAY, FEBRUARY 29, 1988

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, DC.

The subcommittee met, pursuant to call, at 2 p.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman Gibbons. Good afternoon, Senator, we are glad to have you. As all of you know this is the third or fourth hearing we have had on this very important piece of legislation. We are going to have to have more of them.

Our first witness today is Senator Domenici. He is from the State of New Mexico and has distinguished himself in many fields around here.

We are happy to hear from you. Your statement and all other statements made today will be inserted in full in the record.

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Mr. Domenici. I greatly appreciate that, Mr. Chairman. I will not ask that any printed remarks be made part of the record. I would choose to talk with you about the Canada Free Trade Agreement.

Let me first say to you, Mr. Chairman, I am not on your counterpart committee in the U.S. Senate, the Finance Committee. However, I have spent a little time on this issue for reasons very specific to my State, but they are reasons that also have some generic consequences. And I would tell you that because of my State's mineral interests and oil and gas reserves, I was regularly briefed by one of the U.S. negotiators for the United States-Canada Free Trade Agreement up until last week.

I am not here in any way belittling the historic nature of this agreement. As a matter of fact, because I believe it may be the forerunner for the handling of trade issues between our Nation and other nations—it is because it is of such significance that I come here to raise two major constitutional issues. I hope you don't consider me presumptuous to raise them.

I think that anytime you have an agreement of this type between two industrial nations such as ours and Canada, partners and friends that share a border, one would expect some traditions such as judicial review that we have used, and that they have used, to be abolished. I would suggest that it is extremely significant that we find out whether or not replacing the article 3 judges that are used now in the appeals in dumping and countervailing duty cases, with political appointees is constitutional.

I would only urge that that be evaluated now as to its validity under our due process and other provisions of the Constitution.

Second, as you know better than I, Mr. Chairman, our States have much less power than the Canada Provinces. That is principally because of that very magnificent simple provision from the Constitution, about interstate commerce. As I understand it, international trade is the prerogative of the national government. However there is no provision, as I understand it, in the Canada system. And I would merely ask that before we agree on this dispute settlement provision in this new agreement, that we seriously answer the question with reference to the effect of this agreement on the Provinces of Canada. Are they going to be bound as much as we as a nation would be bound by the agreements made.

I think it is an extremely important issue, especially when you consider that the Provinces of Canada, some of which are extremely mineral and resource rich, have been intimately involved in creating incentives, and subsidies and have been making policy regarding the management of their resources in ways which are totally inconsistent with free-market principles. That is their prerogative, but if we approve that agreement we ought to be assured that their Province-owned governments are going to be bound to the agreement.

I would turn to two issues that concern the Senator from New Mexico. I will take one that has already caught the attention of Senators who represent oil- and gas-producing States, so-called oil patch.

It has caught the attention of Senators like Boren, Nickles, Johnston, Wallop, and Breaux and others who have joined me in the introduction of a bill, which we call for lack of betters words, "the United States-Canada Free Trade Agreement Oil and Gas Incentive Equalization Act of 1988." It is a very long title, but in essence let me suggest, Mr. Chairman, that if you read the agreement objectives and compare them to the realities of the marketplace, you find that the objectives have no relationship to the marketplace. You know that Congressman Udall tells funny stories about his law professor who taught him about the "whereas" matching up with the "wherefores."

If you read the whereas in the agreement, there is supposed to be a level playing field with respect to incentives for production of oil and gas. The rules are supposed to be the same north and south of the border. We have concluded in reviewing the agreement and talking to the Canadians that the rules are not the same. We have been seeking from the Canadians and American Government a bona fide list of incentives that exist in Canada and the United States so that we could determine whether we are working on a level playing field. The Canadians to my knowledge, have not yet delivered to anyone an authenticated version of what their incentives in oil and gas production and development are.

They have told many Senators, and I am sure many House Members that they are going to deliver that list, but in the meantime we have concluded from that we know that there are a number of provisions in their law that create a much greater incentive for the production of oil and gas than exists on our side. In view of this disparity at least 20 Senators think the executive branch should look at that carefully while we examine it. We are urging that before the actual agreement and enabling legislation is sent to the Congress that the administration seriously consider some "incentive equalization" provision. That is to say, include changes in our law in the field of oil and gas to "catch up" our incentive package.

This is a controversial issue in America and in Congress, but this time we are talking about the windfall profits tax as a provision which no longer exists in Canada but does here. We are talking about provisions wherein geological and geophysical expenses are treated differently in Canada than here.

We are talking about years and years of royalty-free production in Canada that exist there that don't exist here. So we will submit for you a copy of a summary of this Incentive Equalization Act.

We think it is very important that the United States, which currently is doing extremely poorly in terms of developing reserves of oil, and not so well in the development of new reserves of natural gas needs to take corrective action. This good policy, even though the proponents of this agreement claim that we are getting a new safety net in the event of international crisis out of this agreement because we are getting access, on a nondiscriminatory basis, to Canada's impressive reserves. Nonetheless, we ought to implement new exploration and development incentives at the same time or in advance of passing this agreement or simultaneously with it. And I urge your consideration for that as a concern. And if, indeed, the administration pursues equalization with some substantive change in our laws, I wanted to take this opportunity to remind you of why I think it is important. I thank you for listening on that particular point.

Now, Mr. Chairman, on a very parochial issue in the sense that it probably applies to only 5 or 6 States, perhaps 6 to to 8 Senators, maybe 10, I would like to talk a moment with you about uranium and uranium production in the United States.

Again with your indulgence, I would submit to you a history of the evolution of the controversy between the uranium-producing companies in the United States and our Government. I want to tell you just briefly why we in the Senate are going to try to pass a uranium transition protection bill before the Canada agreement passes.

I think you know, Mr. Chairman, and I see now that my good friend Representative Frenzel is here—I think you both know that this Senator has been working on uranium for the last 6 or 7 years. Let me give you a quick history of where we were just before this agreement was entered into.

I have been telling the Congress that—and the Secretary of Energy, that there is provision of American law that requires a viable American uranium industry.

We finally got this Secretary of Energy, some 2½ years ago, to report on the viability of industry as mandated by law, and in all truth and honesty, he reported a nonviable industry. A nonviable finding is supposed to trigger Federal Government corrective action. But nothing happened.

With that nonviable report the industry went to court and in the Federal court of Colorado, and the 10th Circuit Court of Appeals found that the U.S. Government had broken its own laws. The statute in question is section 161(v) of the Atomic Energy Act.

The court enjoined the Federal Government from permitting the importation of any more uranium. That is not my position. That is on appeal to the U.S. Supreme Court. Certiori was granted and the case will not be decided for 8 or 9 months. In the meantime we asked the administration to grant interim relief.

A reading of the agreement would wipe out the Atomic Energy Act provision that requires that America have a viable uranium industry. Under the agreement the case would be mooted. All our efforts to get some period of time during which we would be able to once again produce uranium in the United States pursuant to our own needs would be eliminated by the agreement. The Canadians have tried unsuccessfully to get Congress to repeal 161(v). The Canadians have lost in the courts on 161(v) but as part of the package they will win what they could not get from the courts or the Congress. This is a bad provision of the agreement. A free-trade agreement should not throw American citizens out of court. Besides, repealing 161(v) under the agreement leaves the United States in a very precarious position. The Canadians are prohibited from ever selling us uranium for national security purposes. If the agreement wipes out the U.S. uranium industry and the Canadians won't sell it to us for defense purposes, Congress needs to act.

We are going to be sending you a bill that deals with uranium enrichment and provides a 12-year protection period for our uranium industry to transition. It would limit imports for 12 years.

It would then phase out thus giving America's uranium industry a chance to play catch up after about 8 or 9 years when the U.S. Government ignored its own laws and permitted the American uranium industry to dwindle.

We believe that it is the height of economic lunacy to let big mines, one of which might represent 30 or 40 percent of America's reserves, be closed up, flooded out and done away with when it would be good policy it provide a 10- or 12 year transition framework.

There is no use asking Canada to do it voluntarily. They have been asked and the Prime Minister has been asked, and they refuse.

We are hopeful that we can pass a temporary provision in advance of this agreement, and I choose to tell you about it because I believe you are interested in what the feelings are about this agreement. The uranium issue alone causes maybe 10 Senators to be extremely doubtful with reference to this agreement.

I thank you for permitting me to talk with you.

I would submit a brief written history of the uranium dispute and a summary of the Incentive Equalization Act with reference to oil and gas which I have discussed with you briefly, I submit those documents for the record.

Chairman GIBBONS. Without objection we will accept those at this point and then let me ask you some questions.

[The material follows:]

HISTORY
ON
THE TREATMENT OF URANIUM UNDER
THE U.S.-CANADIAN FREE TRADE AGREEMENT

- In 1964 the Congress amended the Atomic Energy Act with the Private Ownership of Special Nuclear Materials Act. It was intended to get more commercial involvement in the nuclear industry. It included a provision (161 (v).) which provided that the Atomic Energy Commission (now the DOE) maintain a viable domestic uranium mining and milling industry.

- In 1966 the AEC began a prohibition on the enrichment of foreign uranium in U.S. enrichment facilities which was intended for use in domestic nuclear power plants. The U.S. enrichment facilities represented 100% of the free worlds enrichment capacity so the restriction was, in effect, a 100% prohibition on the use of foreign uranium in U.S. reactors.

- This decision was reviewed in 1974 by the AEC. It was decided that the demand for uranium was great enough and the industry was well enough established that the restrictions could be phased out.

- At no time during the period of the restrictions was there a GATT (General Agreement on Trade and Tariffs) related challenge to the AEC policy. Article XXI of GATT provides an exemption from GATT for fissionable materials.

- In the late 1970's a secret worldwide cartel made up of, among others, Canada, Australia, and France was discovered and disbanded. The price of uranium collapsed. At the same time the number of nuclear power plants planned in the U.S., dropped dramatically. Exploration and mine development in the U.S. dropped. High priced mines could not compete with aggressive marketing of new, low cost mines in Canada, Australia and South Africa.

- In 1981 the DOE the DOE was asked (by Senator Domenici) to review the "viability" of the U.S. industry. DOE declined.

- In 1982 the an amendment to the Atomic Energy Act was enacted which required the DOE to assess the viability of the industry every year. The DOE found the industry viable for two years. In 1984, and every year thereafter, the DOE has found the industry "non-viable."

- The DOE declined to take action to protect the industry, claiming that the Atomic Energy Act direction to the Secretary to "maintain a viable industry," was discretionary.

- In 1984 several uranium companies sued the DOE to compel action under 161 (v). In June 1986 the Federal Court in Colorado ordered DOE to restrict enrichment of foreign uranium intended for use in the U.S. entirely until a rulemaking was done setting the levels necessary to protect the industry. The 10th Circuit Court of Appeals unanimously affirmed that ruling in 1987. The Supreme Court will hear the case, on appeal, this Spring. No matter how the Court rules, DOE will still have to act. Even if it is found that the DOE has "discretion" it cannot be exercised "arbitrarily."

- In 1984 34.5% of the U.S. requirements for natural uranium were met with imports. The DOE's Energy Information Administration projects that imports will exceed 50% in the 1990's.

- In the 99th Congress the Senate Energy Committee reported legislation modifying the manner in which the mechanism of import restraint would work but still providing protection through the year 2000.

- In November, 1987, the Senate Energy Committee reported S.1846 (13 yeas and 2 nays). It would repeal the protection provided under 161 (v) of the Atomic Energy Act and provide a transitional period of protection through the year 2000. All existing contracts for foreign uranium would be honored and there would even be some room for growth of imports under the phase-out of restrictions.

- The legislation is supported by the Edison Electric Institute (an organization representing virtually all the privately owned electric utilities), the Oil, Chemical, and Atomic Workers of the AFL-CIO, and the Uranium Producers Association.

- In December of 1987 the United States joined with Canada in a bilateral free trade agreement which must be approved by the Congress. Among the changes to existing law proposed in the agreement is the repeal of 161 (v). of the Atomic Energy Act as it would apply to Canada.

- Many other industries which come under the Agreement are provided a transition from whatever protected status they enjoy, to a free market and uranium is not.

- This Agreement would negate any action ordered by the Supreme Court after its review of industry claims that the Department of Energy has not obeyed the law in assisting the Uranium Industry as it would pertain to imported Canadian uranium imported.

- The consideration of the Canadian-U.S. Free Trade Agreement is under expedited procedures and is not amendable, there is no opportunity for the Congress to provide the transition to a free market for the uranium industry which would assure its survival in the future.

- The existence of a domestic uranium industry has been recognized by this country since the inception of commercial nuclear power.

- The Congress should take such actions, in conjunction with the Executive Branch, as are necessary, to provide for a transition from current law to a free market which will assure the continued viability of a domestic uranium mining and milling industry.

"U.S. Canada Free Trade Agreement
Oil and Natural Gas
Incentive Equalization Act of 1988"

- A bill to be introduced by Senator Domenici, cosponsored by Senators Boren, Nickels, Wallop, Johnston, Wallop, Breaux, Simpson, Bingaman, McClure.
- The findings and purposes of the bill are identical to the objectives set forth in the U.S.-Canada Free Trade Agreement, however the findings specifically mention oil and natural gas.
- Purpose of the bill is to conform the intent of the U.S.-Canada Free Trade Agreement with the realities of the oil and natural gas marketplace in North America; to provide parity between the tax burdens and the other exploration and development incentives provided in the United States and Canada.
- Specifically, the bill includes the following provisions:

  Expresses the intent of Congress that this Act be enacted prior to or at the same time as Congress considers the U.S.-Canada Free Trade Agreement.
- Repeals the Windfall Profits Tax to conform the U.S. Internal Revenue Code with the Canadian Income Tax Act, which repealed the Canadian Windfall Profits Tax in 1986.
- Improves tax treatment of geological, geophysical and surface casing costs to provide parity between the U.S. Internal Revenue Code and the Canadian Income Tax Act.
- Eliminates the Income Limitation Rule to assure parity between the U.S. Internal Revenue Code and the Canadian Income Tax Act.
- Reforms the percentage depletion allowance to provide incentives to offset resource allowances provided by the Canadian government.
- Repeals the Net Transfer Rule to provide a "catch up" incentive since the U.S. industry is required to pay substantially higher royalties than Canadian companies.
- Repeals the recapture provisions dealing with disposition of oil, gas, or geothermal property interests in order to provide "catch up" incentives for U.S. industry, which pays substantially higher royalties than Canadian companies.
- Provides a marginal production credit in order to offset exploration credits provided by the Canadian and provincial governments.
- Provides a crude oil production credit for maintaining economically marginal wells, a credit that offsets the cash payments made by the Canadian provincial government for exploration and development.
- Provides a crude oil and natural gas exploration and development credit to offset exploration and development credits provided by the Canadian and provincial governments.
- Eliminates intangible drilling costs as a preference item under the Alternative Minimum Tax in order to provide parity between U.S. Internal Revenue Code and the Canadian tax code.
- Establishes a procedure underwhich the Congress and the Administration work together to implement a plan designed to decrease imports whenever foreign oil dependence exceeds 50 percent.
- Repeals the taxable income test for percentage depletion in order to partially offset the resource allowances provided by the Canadian Government.

Chairman GIBBONS. On the dispute settlement mechanism in the agreement, we have done an elaborate amount of research on the constitutionality of it and, in my opinion, and in the opinion of other distinguished experts—I will not put myself in that category, but I do think I am an expert, I will leave off the word distinguished—we find it constitutional. Of course, that is a question that will be raised some day in court, and we will settle it forever.

One of the changes that I think the administration will make in its submission to the Congress is to allow the judges, who now serve in the courts—those judges who are trained particularly in trade law—to be selected as panel members in deciding those disputes. That is just an oversight, frankly.

We don't think it will require the changing of the agreement at all, it is just a matter of changing the powers, duties and responsibilities of those judges. It does not give them any preference to being appointed, but the President could appoint them rather than, perhaps, someone else. We would just remove any prohibition that might be in the statute creating those courts.

On the Canada Provinces, yes, Canada is not as united as the United States, but neither is the European Community, and there are lots of other countries around the globe that are not as united or are more united than we are. But we deal with them, and we expect them to carry out their own subparts of the responsibilities that they agree and accept, that we mutually agree and accept in the treaty. So I think that we can proceed in that field and see what experience brings us in it.

The level playing field, nobody is going to object to that. I would hope that any level playing field we have, Senator, does not include subsidies. And I would say that in the Canada picture, if they have subsidies that are injurious to us and ones that would seriously hurt the oil and gas industry in the United States, then I hope that they will be attacked under the existing countervailing duty agreements. I don't know any reason why they shouldn't be.

On uranium, I don't know how you mine uranium in your part of the world, in my part of the world it is a leftover provision from our strip mining. In fact, the first atomic bombs in World War II were fashioned right out of my district from the throwaway stuff that we still throw away because you can mine it in a more concentrated form out of ore. How is uranium mined in your area?

Mr. DOMENICI. Let me give you an example of one situation that concerns me greatly. I am fully aware that when you look at the States that have produced uranium in our four decades of atomic history, Florida is one.

Chairman GIBBONS. Yes.

Mr. DOMENICI. If you look at where the big quantities of uranium came from for at least 20 or 25 years, it came from New Mexico. I think at one point we produced 65 percent of America's uranium that was then turned into the yellowcake and most of it is produced from either strip mines when we found uranium near the surface or from underground mines.

As uranium veins in New Mexico that were easy to mine were mined out, a major American company found that one of the main uranium veins in New Mexico went right under a major mountain, commonly know as Mount Taylor, in New Mexico. They did enough work to know that under the mountain was a huge bed of uranium.

What they did, Mr. Chairman, and members of the committee, is right up along side of the mountain they mined a huge mine shaft. They then went under the mountain and there sits from all estimates somewhere between 30 and 45 percent of the entire uranium reserve of the United States. It is a $450 to $500 million investment producing literally nothing today. First they ran into water which they expected. They now pump water by the millions of gallons a day to keep the mine open.

How long will it be kept open—1 more year, 2 more years? Clearly when it is closed, I am told by all experts, that a rather significant act will have occurred—you will have locked up permanently whatever percent of the uranium reserves this country has, between 30 and 40, which ever you choose, depending upon price. I clearly worry about that.

The Canadians for years have told us and told this administration and the previous administration, don't enforce your laws because you need not worry about supply. And then they have said to try to protect yourselves is just protecting some very weak deposits, and we are better at it, we have rich veins, they said. The Australians said the same thing in the past. But times change.

The Australians were about to take over the world market and then their Government changed and they weren't sure they wanted to be in the uranium business because there is a provision in their ruling party's platform that said they didn't want to be involved with anything nuclear.

They didn't close the mines, but aren't developing any new ones.

We have now asked the Canadians, and so has Senator Simpson, to explain to us why at least two of their mines which are no richer than New Mexico mines; in fact, one is less rich in terms of quality. How has it remained open unaffected with an entire city dependent on it during these so-called competitive days, when ours closed down?

We think we know how that happened, we think it is an indirect subsidy because they insist that every new nuclear powerplant that is opened garner long-term supplies and contract for that with Canadian companies.

The price is thus guaranteed and anything above that is gravy. We think that is how they have been able to maintain some of their low grade mines, and we have been unable to maintain higher quality mines. Ours has gone from 70,000 miners at the peak, we think today there are 300 miners, and we think the mine, like I described wherein a few score are employed, we think they are there for preservation purposes to try to save a $400 million investment and a reserve.

Chairman GIBBONS. You say that mine is closed?

Mr. DOMENICI. No, sir. They are keeping it open and draining the water. We think if we got the 12-year transition provision in the bill that is going to be running through the Senate, and we hope comes to you, we would have a 12-year opportunity to get back on our feet with a limitation on imports that would permit Canada to sell every bit that it is selling and more, but we will be able to sell some, too.

We will try to get you that bill within 6 or 8 weeks, and let it come in ahead of this agreement, and I was giving you the background on it.

Chairman **Gibbons**. Thank you.

Mr. Frenzel?

Mr. **Frenzel**. Mr. Chairman, I want to thank our distinguished friend from the Senate for coming here. You mentioned incentives in the energy industry, but you only mentioned one by name, that is the windfall profits tax. There is in the bill now in conference a repeal of the windfall profits——

Mr. **Domenici**. You mean in the trade conference?

Mr. **Frenzel**. That is correct. What else do you have in mind?

Mr. **Domenici**. Well, change and improve the treatment of geological and geophysical and surface casing costs to provide parity between the U.S. Internal Revenue Code and the Canadian income tax. Eliminate the income limitation rule to assure parity between our code and their Canadian income tax. Depletion allowance percentages to offset incentives on resource allowances provided by the Canadian Government. Repeal net transfer rule to play catch-up with incentives since our industry is required to pay substantially higher royalties than the Canadian companies.

In the list that I will submit to you, I think I said before you arrived that we have asked the Canadian Government, and I hope you do officially, for an authentic list of their incentives and subsidies because they are hard to find.

Some are provincial, some are national. They have interesting royalty holidays, when royalties due don't have to be paid. Royalties are higher than taxes. We have no holidays from our royalties and the royalty payments in this country are substantial between the State and Federal Government.

They provide direct cash incentives up to $10 million for small companies to go out and explore for oil and gas. I must say to you all that I am—while I find fault with reference to some of the issues that I have raised here, in particular uranium from my State's standpoint, and I am worried about our oil and gas industry getting out of balance with theirs, I fully understand that if this agreement works, we have provided a significant safety net with reference to an international oil shortage of the type that burdened this country with gasoline lines.

According to this agreement, if a shortage ever occurs, Canada must continue to give us the same percentage of their product at the same price. I laud that and compliment the administration for that, but I must say to my friend that since this agreement is so important as a precursor and format for other agreements with our trading partners, I believe we ought to use every opportunity to make sure that it is fair for America. For oil and gas, I believe for a long time that the teeter-totter will not be level.

I can't quantify it for you yet. If you repeal windfall profits, you have done one little thing, but I believe they have a much better incentive for continued production than we do.

One might say, so what, since it has become a one-market arena and we have some protection. I think dependence when we have our own reserves and the demise of a viable oil and gas industry, in particular the independents, is very dangerous in terms of the next 25 years.

I can't read out 50—I don't know what we will be doing in oil and gas then. Since we have no nuclear energy policy—Japan will have 50 percent of their domestic electricity from nuclear. We have no such plan. Our oil and gas production will become more and more important in the trade balance.

Mr. FRENZEL. Thank you, Senator. I am glad you mentioned the energy security. Up where I live, we get a heavy proportion of our oil and gas from Canada. In 1973, there wasn't anybody else with any to give us, and we were scared to death, and at least my people feel a lot better with that security.

I think all of us here are anxious to equalize or to provide matching incentives or to remove incentives around it, and I think there is at least some feeling on this side of the Capitol to support the single item that is in the trade bill to which you have earlier referred.

As you know, it is going to be difficult for us to handle some of the rest of those things. There is a large crowd around here who supported the Tax Reform Act of 1986, which cleaned out a lot of those incentives in the name of reform.

But I am personally glad you came here, and I hope we can be helpful to you in what you are trying to do.

I yield the balance of my time.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you, Mr. Chairman.

Thank you for your testimony, Senator. I wanted to clarify one point. You mentioned the drastic drop in employment at this one mine that goes under the mountain.

Mr. DOMENICI. All of our mines combined, that was just an example of one.

Mr. PEASE. Okay. Anyhow, you said that if those mines are not able to start producing soon and selling uranium that they will be closed up, and I think you used the expression that this 30 percent or so, or 40 percent of all our country's reserves of uranium would be locked up permanently.

Am I missing something—if they close down a mine, why can't it be opened up again, even if it is a costly process, at some later point?

Mr. DOMENICI. Let me make sure that I am understood here. Obviously, there are uranium deposits in the United States. There are some new ones being found, incidentally, in the State of Arizona that are extremely rich deposits.

There are some in New Mexico that would not be permanently lost if closed. They will still be available, I don't know how much they will cost to be opened, but Mount Taylor mine that I told you about earlier, once they close it, it will be flooded, because that is the geology—they have done it in a way where water is developing, part of their cost was to pump out the water and mine the uranium.

They are doing that now to keep the $450 million investment alive to mine some day. They are 2 years from saying we can't spend *x* million dollars a year for nothing. If they close it, it will be flooded. That mine, from what I understand from the experts, will be precisely in a state that I just described, it will not be minable again.

Now, I don't want to say that if uranium went up in price 2,000 percent in the year 2050 that somebody might not go down there and come in another way and take out millions of gallons of water that have flooded it and make a dollar, but I am led to believe for all intents and purposes, my statement is accurate, it is gone.

Mr. **Pease**. Thank you very much.

Thank you, Mr. Chairman.

Chairman **Gibbons**. Mr. Crane.

Mr. **Crane**. I want to welcome the Senator before the committee. We appreciate your testimony. I think we stand cn a threshold of what, from an Illinois perspective, is a major forward step—far from perfect, but a major forward step. I would hope that unlike earlier efforts to achieve liberalization of trade with our biggest trading partner, that while we proceed circumspectly and minimize injury to American business, on the other hand, let's not get derailed.

I certainly appreciate the concerns that you have expressed to the committee, and thank you for your testimony.

Mr. **Domenici**. Thank you. I want to repeat, I am fully aware of the historic nature, the bundle of benefits that can flow from this to both countries, but I submit to you that those negotiating agreements are negotiators, and sometimes we lose. Sometimes we are in a rush to get something done, and leave things on the table that shouldn't be left there.

I submit to you that my perusal of this, on a scale of 10, we got to 9, and instead of getting the 10, they said take it or leave it, and we took 9, and some of us are finding that oil and gas is one left out.

The energy security safety net provisions were so dramatic, and since we didn't know what their incentives were when we signed the agreement the negotiators were satisfied. But Congress has to be more careful. We must create a level playing field. It will not take care of itself—and 20 Senators are saying we are not sure that that level field is there in oil and gas.

There are other provisions that we are submitting, asking them to help us with in advance. If they do, they will come over to you as part of the agreement's implementing language. If they don't, we will have to do what we can in our respective bodies.

Chairman **Gibbons**. Let me comment on the statement that you just made. We are not accepting Canadian subsidies, Senator. If they have subsidies that unlevel the playing field, and they are dug out by American industry litigants, they are just as subject to litigation after this agreement is adopted as they are before.

We are not grandfathering their subsidies in. Mr. Duncan.

Mr. **Duncan**. I have no particular questions. I would like to thank our colleague for being here. I agree that we have to be cautious on what we do with this trade agreement, because I have some reservations about some things in it myself.

We are delighted to have your input. Thank you. Thank you very much, Mr. Chairman.

Chairman GIBBONS. You have been very helpful. It is always good to see you. You have made a great contribution to the United States.

Our next witness is the Honorable James R. Thompson, Governor of Illinois. If anybody should be welcomed to the committee, it should be the Governor of Illinois. Illinois is proudly represented on this committee in the form of Mr. Rostenkowski and Mr. Crane and Mr. Russo.

We are very glad to have you here, Governor. 12 years as Governor, and you look that young—how do you do it?

STATEMENT OF HON. JAMES R. THOMPSON, GOVERNOR, STATE OF ILLINOIS, AND ON BEHALF OF THE NATIONAL GOVERNORS' ASSOCIATION

Governor THOMPSON. By coming to Washington and testifying before this committee. This is one of several times that I have had the privilege of appearing before this committee or one of its panels, and each occasion has been enjoyable and an education for me, as well.

I appreciate the opportunity to appear today to testify in support of a United States-Canada Free Trade Agreement. I have spent, Mr. Chairman, as you noted, 12 years as the Governor of the State of Illinois, in some ways now and for most of this century, and I hope into the future as well, perhaps the U.S. most representative State. We have it all in Illinois, large cities, suburban areas, small towns, agriculture, agribusiness, mining, manufacturing—we even have oil in parts of southeastern and central and western Illinois.

So, from that perspective as the Governor of the State of Illinois, I believe I must say to this committee today that the ability of the United States and Canada to reach a free trade agreement after years of frustration and failure ranks at the top of the issues that I have seen come before this Congress that affect my State and our region of the Nation.

I speak here not only as Governor of the State of Illinois, but also as a representative of the National Governors' Association. As Governor of my State, I have taken an active role in encouraging support for this agreement, not just by my testimony today, but among the private sector in our home State.

The reason is clear. In 1986, Canada and Illinois traded over $6 billion worth of products and services between their country and our State. If Illinois were a country, it would rank as Canada's third largest trading partner, after the United States and Japan. Among the 50 States, Illinois is fourth in merchandise trade with Canada.

We believe the FTA will benefit Illinois and the United States by increasing two-way trade and creating new jobs for our citizens, but equally important, the trade conflicts between Canada and the United States are the same ones the United States is trying to resolve with all its major trading partners.

This agreements sends an important signal to our trading partners around the world—that the United States seeks to tear down, rather than build up, barriers to trade. For Congress to reject the FTA would send just the opposite signal. The United States and

Canada, countries that have a long legacy of shared democratic principles, common defense interests, commercial ties and an open, 3,000-mile border, are unable to establish a truly open trading relationship.

Mr. Chairman, I think you know that your Governor, and the Governors of all 50 States and Territories, have become much engaged as promoters of international trade as we seek to expand exports from our States and investments into them.

The role of the American Governor has changed in the more than a decade that I have been privileged to serve. In 1977, when I first became Governor, we were thought of more as COOs, eyeshade managers of State government. Today, we are more CEOs, entrepreneurial in nature.

We are just as likely to travel the globe as chief spokesmen and salesmen for our State or to come to Washington and deal with issues like foreign trade, as we are any parochial issue back home, and I think that is to the country's good.

So, it is important, I believe, for Governors to enter this country's trade debate. Just last week, at the annual meeting of the National Governors' Association here in Washington, the Governors adopted a resolution in support of the FTA. Similarly, the Midwest Governors' Conference and the Council of Great Lakes Governors have adopted resolutions in support of the FTA.

Editorials throughout the country have endorsed the FTA, as have economists from a range of disciplines. For example, from my home State, the Chicago Tribune wrote on October 7, 1987:

> It is not a perfect arrangement in that both countries refused to give up some subsidies and other barriers. But it is a major step toward ending creeping protectionism in the world, and it demonstrates to others that nations can literally negotiate free trade pacts that cover sensitive areas like investment and services. Legislators in the United States and Canada should not erase this example and should not prevent the benefits of freer trade from touching their citizens.

Last fall, after the FTA was concluded, I formed the Illinois-Canada Free Trade Committee, a coalition of Illinois business that support the FTA. Within weeks, more than 300 Illinois businesses of all sizes and in many industries had joined the committee.

Illinois exported $2.9 billion worth of commodities to Canada in 1986, including motor vehicle engines and parts; front end loaders; combine reaper-threshers; tractor engines and parts; newspapers, magazines and periodicals; miscellaneous telecommunications equipment; railway equipment; and chemical products.

Illinois imported some $3.1 billion worth of commodities from Canada in 1986. Major imports included crude oil; truck tractors and chassis; newsprint paper; motor vehicle engines and parts; organic and inorganic chemicals; softwood lumber; aluminum and alloys; paper for printing; petroleum and coal products; and fertilizer materials.

Illinois has some of the largest heavy equipment and transportation equipment manufacturing facilities in the world, including Deere & Co., Caterpillar, Dresser Industries, and FMC Corp.

Headquartered in Peoria, IL, Caterpillar accounted for a staggering 1 percent of total U.S. exports in 1987. In 1987, the company's exports produced a net favorable contribution of $1.05 billion to the

U.S. balance of payments. About 14,000 U.S. Caterpillar jobs were supported by U.S. export sales in 1987.

Caterpillar employs 29,234 workers in Illinois alone. Plants in Decatur, Aurora, Peoria and Mossville, Ill., all produce Caterpillar products that will continue to face high Canadian tariffs, if the FTA is not ratified.

For example, motor graders made in Decatur, face a Canadian duty of 10 percent. The corresponding U.S. duty is 2 percent. We get that phased out in 5 years. Wheel loaders from Aurora: Canadian duty 9 percent, U.S. duty 2 percent. Skidders, Decatur: Canadian duty 8 percent, U.S. duty 2 percent. Generator sets from Mossville: Canadian duty 9 percent, U.S. duty 3 percent. Off-highway trucks from Peoria, Canadian duty 9 percent, U.S. duty 4 percent. An off-highway truck costs $600,000. A Canadian tariff of 9 percent adds $54,000 to the price of the product, and it is a very competitive industry.

I think of interests to the entire Nation, Mr. Chairman, not just heavy manufacturing in Illinois and the Great Lakes, and the fact that the FTA contains the first binding international rules on the treatment of a broad range of service industries where much of our economic growth in America is going. This is a significant step forward for the services sector.

Services are not only a vital part of our national economy and the economy of Illinois, but they are a growing positive component of the balance of trade for the United States.

The FTA is supported by many Illinois service firms, including Chicago-based Arthur Andersen & Co., a company with 20,209 U.S. employees and 5,030 Illinois employees. The FTA will preserve what is already an open environment between Canada and the United States for Arthur Andersen's services.

Perhaps most important, the FTA establishes a constructive point of reference for the multilateral negotiations on services which will address the far more severe impediments services firms face in other countries.

So, the FTA is a precursor to what we hope to accomplish through GATT and through other bilateral negotiations. The FTA would benefit hundreds of Illinois businesses that currently face duties on machinery and industrial equipment by increasing the competitiveness of their products in the Canadian market.

As much as the FTA will benefit big companies like Caterpillar, it is important to small companies as well. I think we must recognize, Mr. Chairman and members of the committee, that the backbone of the U.S. economic system is in small and medium-sized businesses all through the United States.

For example, Precision Twist Drill Co. of Crystal Lake, Ill., employs 1,700 people in Illinois, Wisconsin, Ohio, and Arizona in the manufacture of high-speed drill bits. Currently, they export about $400,000 per year to Canada, in spite of a 12-percent tariff. The president of the company told me that they could quadruple their exports to Canada with ratification of the FTA.

Peters Machinery Co. of Chicago employs 50 people in the manufacture of equipment used in cookie and cracker production. A piece of custom machinery faces a duty of 10 percent going into

Canada, that adds $20,000 to the cost of one of their $200,000 machines.

Illinois makers of a wide range of consumer products may also add jobs as a result of increased trade with Canada. Sears Roebuck, the largest retailer, is headquartered in Chicago, and has major retail operations on both sides of the border. The company supports the FTA because it will provide more cost-efficient sourcing and distribution opportunities. It will provide greater consumer chôice with market-driven pricing on both sides of the border.

The L.R. Nelson Corp. of Peoria employs, at peak capacity, 500 people in the manufacture of lawn sprinklers and sprinkler systems. Currently, it exports between $500,000 and $700,000 worth of products to Canada. They say they could triple exports with ratification of the FTA.

One point often overlooked is that we in the States have been encouraging export by small- and medium-sized businesses. Canada is our closest foreign market. It is also the easiest market to enter, in spite of the tariffs which currently exist. I am convinced, and many Governors are convinced, that if our small- and medium-sized businesses, which have always been afraid up until now to try the export market, and bind themselves artificially to the United States, would get in the habit of trading with Canada, once they learn the export business, they could expand their opportunities to the Pacific rim and to Europe.

Canada provides a little first step, on a geographic basis, on a language basis, on a similarity of customs basis, to get companies that ought to be in the export business, expanding their markets beyond the domestic United States into that business; and ratification of the FTA would help in that regard.

The European Community experienced extraordinary results during the period in which tariffs were phased out among its member countries. During that period, from 1959 to 1969, trade within the EC grew by over 340 percent compared with trade growth outside the EC of 130 percent.

Similar bilateral arrangements throughout the world have demonstrated the necessity of this kind of effort. I believe the eyes of the international marketplace are upon us, and we have a unique opportunity to shift the trade climate toward greater openness well into the next century, to confirm what Benjamin Franklin told us more than two centuries ago: No nation was ever ruined by trade.

[The statement of Governor Thompson follows:]

STATEMENT OF JAMES R. THOMPSON, GOVERNOR OF ILLINOIS

No Nation was ever ruined by Trade. -- Benjamin Franklin

Mr. Chairman, I appreciate the opportunity to appear before the House Ways and Means Committee to share my views on the proposed U.S./Canada Free Trade Agreement.

In many respects, we are at a crossroads and the deliberations and ultimate decision on the agreement will determine the future trade policy of this country well into the 21st century. Whether we are capable of seeing the future and embracing it, is the challenge we face on this subject.

In my 12 years as Governor of a major industrial state, I have seen many important issues come and go. This issue ranks at the top of the list in importance and in potential long-term benefits for this country.

As Governor of the State of Illinois, I have taken an active role in encouraging support for this agreement. In 1986, Canada and Illinois traded over $6 billion worth of products and services. If Illinois were a country, it would rank as Canada's third largest trading partner (after the United States and Japan). Among the 50 states, Illinois is fourth in total merchandise trade with Canada.

The FTA will benefit Illinois and the U.S. by increasing two-way trade and thereby creating new jobs for our citizens. But equally important, the trade conflicts between Canada and the U.S. are the same ones the U.S. is trying to resolve with all its major trading partners. This Agreement sends an important signal to our trading partners around the world -- that the U.S. seeks to tear down, rather than erect, barriers to trade. Conversely, for Congress to reject the FTA, would send just the opposite signal -- that the U.S. and Canada, countries that have a long legacy of shared democratic principles, of common defense interests, of strong commercial ties, and an open 3,000 mile border, are unable to take a major step toward a truly open trading relationship.

We have all heard the degree to which the Governors of the 50 states and territories, have become engaged as promoters of international trade as we seek to expand exports from our states and investment into them. And, along with this role, it is important that the Governors enter this country's trade debate. I am pleased to tell you that just last week at the annual meeting of the National Governors' Association, the Governors adopted a resolution in support of the FTA. Similarly, the Midwest Governors' Conference and the Council of Great Lakes Governors have adopted resolutions in support of the FTA. And we all know that newspaper editorials throughout the country have endorsed the FTA, as have economists from a range of disciplines.

The Chicago Tribune wrote on October 7, 1987, "It is not a perfect arrangement in that both countries refused to give up some subsidies and other barriers. But it is a major step toward ending creeping protectionism in the world, and it demonstrates to others that nations can literally negotiate free trade pacts that cover sensitive areas like investment and services. Legislators in the U.S. and Canada should not erase this example and should not prevent the benefits of freer trade from touching their citizens."

The Peoria Journal-Star wrote on October 8, 1987, "The FTA... provides a saner model for overall trade policy than the zealously protectionist bills Congress is wrestling with." They went on to say, "Central Illinoisans... want a chance to compete in the world market without the interference of Congress."

In the fall of 1987, I formed the Illinois/Canada Free Trade Committee, a coalition of Illinois businesses that support the FTA. Within weeks, more than 300 Illinois businesses, of all sizes and in many industries, had joined the Committee.

Illinois exported $2.9 billion worth of commodities to Canada in 1986. Major exports include:

> Motor vehicle engines and parts; front end loaders; combine reaper-threshers; tractor engines and parts; newspapers, magazines, and periodicals; miscellaneous telecommunications equipment; railway equipment; and chemical products.

Illinois imported some $3.1 billion worth of commodities from Canada in 1986. Major imports included:

> crude oil; trucks, truck tractors and chassis; newsprint paper; motor vehicle engines and parts; organic and inorganic chemicals; softwood lumber; aluminum and alloys; paper for printing; petroleum and coal products; and fertilizer materials.

Illinois has some of the largest **heavy equipment and transportation equipment** manufacturing facilities in the world including Deere & Company, Caterpillar, Dresser Industries, and FMC Corporation. Headquartered in Peoria, Illinois, Caterpillar accounted for a staggering one percent of total U.S. exports in 1987. In 1987, the company's exports produced a net favorable contribution of $1.05 billion to the U.S. balance of payments. About 14,000 U.S. Caterpillar jobs were supported by U.S. export sales in 1987. Caterpillar employs 29,234 workers in Illinois alone. Plants in Decatur, Aurora, Peoria, and Mossville, Illinois all produce Caterpillar products that face high Canadian tariffs.

Caterpillar currently faces Canadian duties on the following products:

	Canadian Duty	U.S. Duty	Phase-Out
Motor Graders (Decatur)	10%	2%	5 yrs.
Wheel loaders (Aurora)	9	2	5
Skidders (Decatur)	8	2	10
Generator sets (Mossville)	9	3	5
Off-highway trucks (Peoria)	9	4	10

An off-highway truck, for example, can cost $600,000. A Canadian tariff of nine percent on that product adds $54,000 to its price, making it uncompetitive in the Canadian market.

The FTA also contains the first binding international rules on the treatment of a broad range of **services** industries. This is a significant step forward for the services sector. Services are a vital part of our national economy and the economy of Illinois, and a growing positive component of our balance of payments.

The FTA is supported by many Illinois service firms including, Chicago-based Arthur Andersen & Co., a company with 20,209 U.S. employees and 5,030 Illinois employees. The reduction of trade barriers and the expansion of international trade and investment are important market factors behind Arthur Andersen's growth into one of the world's largest accounting and management information consulting firms. The FTA will preserve what is already an open environment between Canada and the United States for Arthur Andersen's services. It will remove some of the minor problems accounting and consulting firms encounter, such as occasional problems professionals face in crossing the border and customs problems related to the shipment of internal publications and training material. But, perhaps most important, the FTA establishes a constructive point of reference for the multilateral negotiations on services, which will address the far more severe impediments Arthur Andersen and other services firms face in other countries.

Illinois exported $81.4 million in **newspapers and periodicals** to Canada last year, the state's fifth largest export category, plus $44.5 million in books and pamphlets, the 13th largest category. For example, R.R. Donnelly & Sons of Chicago employs 5,000 in Illinois, and 22,000 nationwide, in the printing and catalog business. Currently, their catalogs face a 25 percent tariff going into Canada.

The FTA would benefit hundreds of Illinois businesses that currently face duties on **machinery and industrial equipment** by increasing the competitiveness of their products in the Canadian market. Precision Twist Drill Company of Crystal Lake, Illinois, employs 1,700 in Illinois, Wisconsin, Ohio and Arizona, in the manufacture of high speed drill bits. Currently, they export about $400,000 per year to Canada in spite of a 12 percent tariff. Arthur Beck, president of the company, predicts it could quadruple their exports to Canada with ratification of the FTA.

Another Illinois company that stands to benefit from the FTA is Peters Machinery Company of Chicago, which employs 50 people in the manufacture of equipment used in cookie and cracker production. If a piece of custom machinery faces a duty of 10 percent going into Canada, that adds $20,000 to the cost of one of their $200,000 machines.

Illinois makers of a wide range of consumer products may also add jobs as a result of increased trade with Canada. Sears, Roebuck and Company, the nation's largest retailer, is headquartered in Chicago and has major retail operations on both sides of the border. The company supports the FTA because it will provide more cost efficient sourcing and distribution opportunites, and will provide greater consumer choice with market driven pricing on both sides of the border.

L.R. Nelson Corporation of Peoria, Illinois, employs, at peak capacity, 500 people in the manufacture of lawn sprinklers and sprinkler systems. Currently it exports between $500,000 and $700,000 in products to Canada and the firm's Special Markets Manager predicts that could triple with passage of the FTA.

Leisure Time Products of River Grove, Illinois, employs 10 people in the manufacture of wood burning systems and accessories for artists and hobby use. Leisure Time Products, and two other U.S. manufacturers of wood burning systems, all face a 10 percent to 12 percent tariff on its products in spite of the fact that there is no Canadian manufacturer of this product. People sometimes smuggle this product into Canada rather than pay this tariff, and it is cheaper to export this product to England than it is to Canada.

LA Marketing of Arlington Heights, Illinois, employs five people in the production of wood products and desk accessories. Those products face a 9.2 percent tariff going into Canada. The owner has tried to do business with Canadian distributors but has found the tariff to be prohibitive. She already has noticed an increased interest in her products at trade shows among Canadians, in anticipation of the FTA.

In conclusion, I refer to this week's cover story in Business Week magazine:

> "America's exports are surging. And more than just grain and computers are heading abroad. Basic manufacturers, once considered a dying breed, are selling products that many thought wouldn't even be made in the U.S. any longer."

U.S. exporters are experiencing signs of a recovery. Smaller companies that had never considered exporting are now becoming engaged in sophisticated international marketing. U.S. companies are selling televisions to the Japanese and leather shoes to the Italians. Governors across the country are developing export assistance programs, exploring innovative export financing programs, establishing overseas offices, and are taking their state's message abroad. This is clearly not the time for the U.S. to thwart this effort by rejecting this historic agreement.

Consumers stand to benefit greatly, not only from reduced prices on a range of products, but from a more competitive trade environment and the resulting increases in product quality. Further, the U.S. will be guaranteed secure access to Canada's abundant energy resources.

The European Community experienced extraordinary results during the period in which tariffs were phased-out among its member countries. During that period from 1959 to 1969, trade within the EC grew by over 340 percent, compared with trade growth outside the EC of 130 percent.

Trade liberalizing agreements in other countries, such as the Australia-New Zealand Closer Economic Relations Trade Agreement, also have demonstrated that reducing trade barriers among nations sharply increases sales to each other. Research has documented a similar experience when tariffs between the U.S. and Canada have been eliminated in the past.

We all realize that the FTA is not perfect. The U.S. did not get all that it had hoped for; that is the nature of negotiations. Is it not better for the U.S. to adopt the FTA as a positive step toward open trade than to reject several years' worth of negotiations in the misguided hope that a perfect agreement may someday be achieved? Some say that phasing-out duties over a five to 10 year period is too lengthy. And the alternative to this agreement? Fifteen, 20, maybe 50 years of tariffs?

The last time the United States and Canada attempted to reach an agreement such as this one was 1911. Our hopes for such an agreement have been dashed by protectionist sentiment and narrow interests. The eyes of the international marketplace are upon us and we have a unique opportunity to shift the trade climate toward greater openness well into the twenty-first century.

As Benjamin Franklin said, "No nation was ever ruined by trade."

APPENDIX

MAIN BENEFITS FOR THE MIDWEST/ILLINOIS

o Tariffs Under the FTA, all tariffs between the U.S. and Canada will be phased out over a 10-year period. Illinois exports of a wide range of products (machinery, consumer goods, printed material, chemicals, etc.) would no longer face duties in selling to Canada. This will help existing exporters by improving cash flow and encourage potential exporters, previously deterred by Canadian duties often in the range of 9 percent and up.

As Canadian duties would remain in force for offshore suppliers to the Canadian market, U.S. exporters, which face major competition from Japanese and European suppliers, would enjoy a "preferential" advantage in the Canadian market.

o Intracorporate Transfers U.S. companies which have established Canadian operations will benefit to the extent that intracorporate transfers between the U.S. and Canada will no longer be subject to duty. This will promote in-house rationalization and enhanced competitiveness for these corporations.

o Automotive Sector In the automotive sector, a number of developments will be beneficial:

a) the tariff remission programs offered by Canada to promote investment by offshore auto assemblers will be phased out;

b) although the Auto Pact will remain, the sanctions available to Canada to ensure compliance by North American assembly corporations with the so-called Canadian production safeguards will be largely removed because duties can no longer be levied on imports from the United States;

c) membership in the Auto Pact will not be offered to any other manufacturers;

d) U.S. (as opposed to offshore) assembly operations in Canada can continue to import from offshore sources, both vehicles and parts duty free. However, the use of offshore parts in vehicles assembled in Canada for shipment to the United States would be discouraged by the establishement of higher North American content requirements under the free trade agreement than currently exists under the Auto Pact.

The effects of the changes will reduce the incentives currently in place to assemble in Canada and to procure Canadian parts by both U.S. and offshore assembly operations. State and Provincial incentive programs are unaffected. The combined effects of the changes should benefit Illinois parts producers (which would, for the first time, be able to sell aftermarket parts duty free) and to increase the relative attraction of Illinois as a location for investment by U.S. and offshore local assemblers vis-a-vis Canada.

o Agricultural Products In addition to tariff elimination, the FTA allows increased access for U.S. goods under Canadian import quotas and licensing programs. Agriculture is export-sensitive and, in general, is supportive of the FTA because it is a significant step toward an environment of free trade. Farmers, perhaps more than any other group, stand to gain from the removal of trade barriers.

U.S. agriculture is particularly concerned about Canada's practice of subsidizing its agricultural exports and has expressed dissatisfaction that the U.S. did not negotiate to improve this situation. Most of agriculture's concerns can and should be addressed as part of the GATT negotiations. The U.S. has made proposals at the GATT round to end all agriculture subsidies.

In 1986, Illinois imported over $57 million worth of fertilizer and fertilizer material. The FTA ensures that these products will continue to enter the U.S. duty free in the future. This is of tremendous importance to Illinois' 87,000 farms, which depend on fertilizer to grow agricultural commodities.

- **Energy** Illinois and the Midwest already are major consumers of Canadian energy, particularly oil. Last year, Illinois imported $796.4 million worth of crude oil from Canada, by far our largest import from Canada. Under the agreement, Canada cannot discriminate against the U.S. in terms of access to energy supplies or in pricing. This greater security of access to Canadian energy resources would be beneficial to the extent that energy users would be able to source on the basis of lowest cost within North America.

- **Financial Services** Illinois banks would, for the first time, be able to purchase a share of a Canadian chartered bank, and subsidiaries of Illinois banks would be able to grow without the current constraint on growth, capital, and market share in Canada.

- **Geographic Advantage** Because of its geographic location and good transportation and communication links with Canada, Illinois is well-placed, among U.S. States, to profit from a free trade agreement with Canada. Banking and other financial services linking Chicago to Canada, particularly Toronto, will be a distinct asset to the State.

- **Publishing** The five-year phaseout of tariffs on U.S. printed matter will be a boost for Illinois printers. Illinois exported $81.4 million in newspapers and periodicals to Canada last year, the state's fifth largest export category, plus $44.5 million in books, pamphlets, the 13th largest export.

- **Government Procurement** U.S. exporters will gain access to about $500 million worth of additional Canadian government procurement opportunites per year.

- **Services** In the first international trade agreement of its kind, service industries no longer will be subject to any regulations or licensing requirements aimed at protecting Canadian or U.S. service providers.

- **Investment** Foreign investment in one another's country will be freed of many restrictions. Acquisitions of Canadian businesses for less than $150 million in Canadian dollars ($114 U.S.) no longer will be screened by the Canadian government. Indirect acquisitions of Canadian businesses will no longer be screened.

LIST OF CONCERNS

Automotive Sector Governor Blanchard has been particularly vocal with his view that the FTA did not fully address the problems in the automotive sector. My position is not in conflict with his -- although I would like to see additional changes in the Auto Pact of 1965, those changes that were achieved in the FTA are an improvement in the status quo.

> Duty Remission - Although the "export-based" duty remission program is terminated, Canada was allowed to continue its "production-based" duty remission program through 1995 for certain foreign-owned auto manufacturers. The program discriminates against the purchase of U.S.-built parts and encourages part supplier investment in Canada.
>
> Rule of Origin - Although an improvement in the definition of the 50-percent Rule of Origin was achieved, some believe that is not high enough to ensure vehicle manufacturers source the engine and drive train -- the major components of a vehicle -- in North America. Governor Blanchard strongly pushed a 60-percent Rule of Origin.

Alcoholic Beverages Governor Tommy Thompson has expressed displeasure with the lack of action on Canadian non-tariff barriers to alcohol imports from the U.S. Although tariffs for alcoholic beverages were eliminated, Canadian barriers to distribution prevent many U.S. producers from entering that market. The new owner of H.G. Heileman Brewery, has threatened to move its Wisconsin facility to Canada.

Movie Distribution There is talk in Canada of requiring licensing of U.S. produced films for distribution in Canada, as a means of addressing the cultural identity issue. (The only other country with such onerous rules is Switzerland.) Rep. Russo of Illinois, it is my understanding that you collected the signature of all 35 Ways & Means committee members in a letter to Prime Minister Mulrooney, expressing concern over this issue. The U.S. retains the right, under the FTA, to retaliate if future Canadian policies are detrimental to our commercial interests. Further, this retaliation would not be subject to the new dispute settlement mechanism.

U.S. Territories The U.S. Territories were not included under the provisions of the FTA, and many Governors have expressed a strong desire to see that situation absolved. It is my understanding that Ambassador Yeutter has agreed to meet with the Territorial Governors to address this situation.

STATISTICAL OVERVIEW

- Illinois ranks fourth in exports to Canada among the states.
- 1986 Illinois to Canada: $2.9 billion
- 1986 Canada to Illinois: $3.1 billion
- About two-thirds of that trade is already duty free, FTA would remove remaining one-third.
- Canadian tariffs average 9 percent, U.S. tariffs average less than one-half of that.
- Canada accounts for about one-third of Illinois' $9 billion annual exports.

TOP ILLINOIS EXPORTS TO CANADA

1. Auto Parts	$308 million
2. Front-end loaders	105 million
3. Combines	92 million
4. Tractor engines, parts	89 million
5. Newspapers, magazines	81 million
6. Telecommunications	73 million
7. Auto engines	71 million
8. Computers	70 million
9. Railway rolling stock	61 million
10. Chemical products	57 million

TOP CANADIAN EXPORTS TO ILLINOIS

1. Crude Oil	$796 million
2. Truck, tractors, chassis	348 million
3. Newsprint	268 million
4. Auto Parts	180 million
5. Lumber	117 million
6. Organic chemicals	110 million
7. Aluminum	87 million
8. Petroleum and coal products	60 million
9. Fertilizer	57 million
10. Equipment, tools	49 million

CANADIAN/MIDWEST TRADE: 1985

- The Midwest accounts for the largest volume of trade with Canada of any region in the United States, both in terms of volume and value of exports and imports.

- Of the total U.S. exports to Canada ($46.3 billion), the Midwest accounts for 44 percent ($20.5 billion) of that figure.

- Of the total U.S. imports from Canada ($65.9 billion), the Midwest accounts for 46 percent ($29.9 billion) of that figure.

- Major Midwestern Exports: automobile parts, electronics, computers, tractors, telecommunications equipment, agricultural products.

- Major Midwestern Imports: crude oil, lumber, automobile parts, fertilizer, newsprint aluminum.

	Midwest Imports from Canada	Midwest Exports to Canada	Trade Balance
Illinois	3,432.1	2,855.9	-576.2
Indiana	1,360.5	2,192.7	+832.2
Iowa	312.8	506.9	+194.1
Michigan	17,909.6	8,356.6	-9,553.0
Minnesota	2,685.5	814.9	-1,870.6
Ohio	3,058.6	4,438.4	+1,379.8
Wisconsin	1,240.6	1,292.3	+51.7
TOTAL	29,999.6	20,457.8	-9,541.8
U.S. TOTAL	65,924.6	46,320.7	-19,603.9

Chairman GIBBONS. Good point. It is obvious to see why you have been so successful in your 12 years as Governor. You have a lot of guts and enthusiasm and good common sense.

Mr. Frenzel, Mr. Pease, we have Grandfather Crane here with us today. I should let him make the announcement—he has been a grandfather for some 12 or 14 hours.

Governor THOMPSON. Congratulations.

Mr. CRANE. Thank you very much. I might add that the attending physician who delivered our first grandchild is Bill Archer's son, and he serves on this committee, too.

Governor THOMPSON. Did you get a discount?

Mr. CRANE. No, but I am tickled because I first met Bill Archer's son in 1970, and he was a teenager at the time, and I was startled when my daughter said, "Dad, you won't believe who the doctor is. He is a junior, and his middle name is Reynolds, and his nickname is Ren." I said there is something kind of poignant about a "Ren" delivering a "Crane."

I want to take this opportunity to congratulate Governor Thompson, because he has played a major leadership role in promoting this concept of free trade with Canada, and it is especially important with Illinois. We are a major trading partner with Canada, and I was reminding our distinguished chairman of the full committee, Mr. Rostenkowski, that we have a vested interest in Illinois in this. But I did not know until your testimony that outside of the United States and Japan, Illinois is Canada's third largest trading partner. I am gratified over that prospect, because of the potential impact it has on our economy in Illinois. Like many of the other Rust Belt States, we went through our travail, too, and are coming out of it.

This provides, I think, a unique opportunity to greatly accelerate that comeback process. I want to commend you for your leadership in forming that coalition of Illinois businesses to promote the concept, and I think it will redound to the great benefit not just of Illinois, but to the benefit of the United States and Canada.

I know there is resistance there, some of the Provincial governments don't like it, but we don't want to miss a golden opportunity to make a major positive stride in the right direction of free trade and set the kind of example that, as you indicated in your testimony is we hope, going to spill out into other regions too.

I salute you for your testimony.

Governor THOMPSON. Thank you, Congressman.

Chairman GIBBONS. You got me to thinking, Governor. I guess Florida is probably the recipient of as much Canadian trade, since we get to warm them up each winter. Also, to those who are worried about foreign investment, I think what is happening in Florida should be very interesting. The Canadians are bringing a lot of capital into Florida and investing it in real estate there.

In my own town, they have taken over a worn-out section of town and are rehabilitating it. It had some good homes in it, rundown homes and rundown commercial property, and they have come in with a lot of imagination, a lot of capital, had to run the gamut of zoning laws and with no power of condemnation, no nothing, have rehabilitated a large section of one of my neighborhoods.

So, they are good citizens, and you have pointed out in great detail how much trade there is between Canada and Illinois. I am sorry that the Governor of Michigan didn't take the same view. But, we will work on him a little bit.

Governor THOMPSON. Mr. Chairman, I think two quick points: As much as we worry about foreign investment in the United States and what that portends in the years ahead, much of it is very useful, as your example suggests. This agreement also gives us the opportunity to do that in reverse.

We have an opportunity to really penetrate the Canadian market in the growing sector of the U.S. economy which is information and financial services. A lot of the Canadian restrictions are removed, and as for investment in Canada, generally the threshold has moved to $150 million worth of capital investment into Canadian companies by the United States which will no longer undergo the preliminary scrutiny and screening that U.S. investment in Canada faces today.

I think that is a major accomplishment on the part of our negotiators.

Chairman GIBBONS. We appreciate your coming. Thank you very much. By the way, I endorse what the Governors are doing as emissaries, going out and finding and discovering markets. I think it is a very useful process. I looked upon it with a little skepticism when they first started, but I have been impressed that the Florida Governors have done a tremendous job in building commerce, and I support them.

Governor THOMPSON. Thank you, sir.

Chairman GIBBONS. Now we will have a panel of the Non-Ferrous Metals Producers Committee, the Independent Zinc Alloyers Association and the Chaparral Steel Co.

STATEMENT OF ROBERT J. MUTH, PRESIDENT, NON-FERROUS METALS PRODUCERS COMMITTEE, AND VICE PRESIDENT, GOVERNMENT AND PUBLIC AFFAIRS, ASARCO, INC., ACCOMPANIED BY BOB CARLSTROM, DOE RUN CO.; HARVEY APPLEBAUM, COVINGTON & BURLING; AND KEN BUTTON, ECONOMIC CONSULTANT

Mr. MUTH. I am Bob Muth, here representing the Non-Ferrous Metals Producers Committee. I have some people with me I would like to introduce.

Chairman GIBBONS. Go ahead.

Mr. MUTH. This is Bob Carlstrom, representing the Doe Run Co., a major primary lead producer; Mr. Harvey Applebaum, who is with Covington & Burling and counsel to our committee; and Ken Button, who is an economic consultant.

We appreciate the opportunity to appear to present to the subcommittee the deep concerns that our members have regarding the Canada-United States Trade Agreement. The Non-Ferrous Metals Producers Committee represents U.S. primary producers of copper, lead and zinc. The concerns that we are expressing are, in fact, shared by a number of other U.S. mining companies that are not part of our committee.

The Canada agreement in its current form fails to address the problem of Canadian Government subsidy practices. And at the same time, it makes far less certain the future effect of U.S. trade laws by eliminating judicial review regarding important unfair trade practices.

Nevertheless, the agreement calls for the eventual phasing out of the modest duties that apply to our materials. With your permission, Mr. Chairman, I will submit my detailed written statement for the record and present summary oral testimony.

Chairman GIBBONS. It will be admitted.

Mr. MUTH. I want to say that the United States nonferrous metals industry today is an industry that is fully competitive on a world basis. We are not here seeking protection from free and open trade. Some years back, there was some question whether there was going to be a U.S. mining industry.

I can tell you that as a result of a lot of pain and anguish, restructuring, rationalization, salary and wage cuts, we have made ourselves competitive in the world today and are fully competitive with our Canadian friends.

The U.S. nonferrous metals industry at the same time enjoys precious little in the way of protection or government support. We are clearly convinced, Mr. Chairman, that we would be vastly better off as an industry competing in a world free of trade restrictions and government subsidies, but that is not what this agreement creates for our industry.

Canada has major Federal and Provincial Government subsidies for its nonferrous metals producers, yet this agreement and in this respect it is unlike even the Israeli free trade agreement, is entirely silent concerning the subsidy issue. There is no provision in the Canadian agreement for the elimination or reduction of subsidies.

In effect, the agreement through silence, we think, is seen in Canada as tacitly endorsing the continuation of existing subsidies.

Chairman GIBBONS. May I interrupt and say at this point for emphasis, that is not the view of this chairman, that is not the view of this committee, that is not the view of this Congress. I want the record to show that clearly, that we, by not moving affirmatively to make the Canadians reduce their subsidies, do not acquiesce in any of their subsidies.

Mr. MUTH. Thank you, sir. We appreciate that statement.

Chairman GIBBONS. We just say that the same rights and remedies are available that have always been available to American industry to redress subsidies.

Mr. MUTH. Our concern with the subsidy issue is not one that we are only now expressing. Early in the negotiations, we met repeatedly with the U.S. Trade Representative and we were assured by the administration that it, too, viewed the Canadian subsidies for the nonferrous metals industry as incompatible with the free trade area, and we were dismayed at the last minute when other considerations seemed to dictate the outcome.

The agreement's dispute settlement mechanism abolishing judicial review also concerns us very much. Given this subcommittee's vital role in insuring the enforcement of U.S. trade laws, we think it should be a concern to the subcommittee as well. Without judicial review, this Congress has no certain means of assuring the fair and impartial enforcement of the laws written by the Congress.

It is true the agreement provides for a 7-year negotiation with Canada on new rules pertaining to subsidies, but it is uncertain at best how anxious Canada will be to accept rules limiting their subsidy practice. I will have a bit more to say about that in just a moment.

But we are concerned also with the point of view that has been expressed to this committee and elsewhere by spokesmen for the administration who appear to be moving toward a negotiation that will replace U.S. trade law with antitrust principles. Now, we are a little perplexed as to what the antitrust laws have to say about subsidies. In my former life, I was an antitrust lawyer, and I don't recall anything in that body of law that would deal with the subsidy question.

But, in any event, you will recall when Ambassador Yeutter was here before you just recently, he indicated that a possibly good result of these negotiations would be, in effect, the abolition of U.S. trade law in favor of antitrust. Would it not be truly perverse if a negotiation designed in part to eliminate subsidies ended up merely eliminating the current discipline over them?

The administration has proclaimed the agreement an excellent model for emulation in the Uruguay round and other bilateral agreements; yet in spite of the acknowledged U.S. goal of removing subsidy practices from the global trading system, the Canadian agreement clearly sends the wrong message to our other trading partners. If in the negotiation of an agreement with our most important trading partner the United States fails to achieve the slightest concession on Canadian industrial subsidies, how can we expect the Uruguay round participants to take seriously our calls for discipline in this area?

Mr. Chairman, you should have no doubt that the Canadians fully understand the import of this agreement for nonferrous metals. Just today we received a copy of a study done by the Canadian Department of Mines, Energy and Natural Resources which speaks at some length about the agreement and its effect on Canadian minerals and metals. This is a many-page document, and I would like permission to submit a copy for the record.

Chairman GIBBONS. Yes, sir.

Mr. MUTH. Reading from page 21 of that document: "In Canada, regional development"—and you will recognize this as a catch word for subsidy—"In Canada, regional development has been frequently linked to mining and mineral processing. The agreement does not inhibit Canada's right to support mineral development in all regions of the country." Now, the same message appears throughout this document. The point is unmistakably clear.

Mr. Chairman, in the past 5 years the U.S. nonferrous metals industry has gone through a grueling restructuring to reduce costs and increase efficiency to achieve true international competitiveness. Key to the success of this effort has been the sacrifices of our workers and management alike in lost jobs, reduced pay and benefits. How can we now ask these workers to compete against a Canadian industry which is fundamentally no more competitive than ours but stronger solely because of government support?

Mr. Chairman, we have wrestled with the question of what to do at this stage of the game. The best solution, of course, from our point of view would be for the executive branch to return to the table to win assurances on the elimination of Canadian subsidy practices in our industry. Short of that, sir, the agreement's implementing legislation should, we believe, contain strong incentives for the elimination of the subsidies.

One such approach would be to make the elimination of subsidies a condition for the phaseout of the relevant non-ferrous metal duties. No doubt there are other incentives that inventive minds could conceive, but we need something because it is clear that at this point the necessary incentives are totally absent.

Mr. Chairman, I thank the subcommittee for the opportunity to present our views. I would be pleased to answer questions. I want to simply say again that our concerns in coming to you are the opposite of protection. We are looking for help from this body in assuring that the efforts we have made successfully to become competitive on a world basis are not thwarted by Canadian subsidy practices and this agreement.

Thank you, sir.

Chairman GIBBONS. Thank you, sir.

[The statement of Robert J. Muth follows:]

STATEMENT OF ROBERT J. MUTH, NON-FERROUS METALS PRODUCERS COMMITTEE

I. Introduction

I am Robert J. Muth, Vice President of ASARCO Incorporated, and President of the Non-Ferrous Metals Producers Committee (NFMPC). The NFMPC believes that the Canada-U.S. Trade Agreement in its current form should not be approved by Congress because it fails to address the problem of Canadian government subsidy practices, it weakens U.S. trade laws by eliminating judicial review regarding important unfair trade practices, and it, nevertheless, eliminates the modest U.S. tariffs on imports of Canadian non-ferrous metals. The Executive Branch should return to the negotiating table with the Canadians to conclude a new Agreement at least achieving the elimination of Canadian subsidy practices. Short of that, the Agreement's implementing legislation should contain strong incentives for the elimination of the subsidies. One such approach would make the elimination of subsidies a condition for the phase out of the non-ferrous metal duties. The concerns expressed by the NFMPC are shared by a number of other companies that are not NFMPC members.

The NFMPC is a trade association of U.S. producers of primary copper, lead, and zinc. These firms are also producers of zinc oxide, cadmium, and sulfuric acid. The member companies are:

ASARCO Incorporated
180 Maiden Lane
New York, New York 10038

Doe Run Company
11885 Lackland Road
St. Louis, Missouri 63146

Phelps Dodge Corporation
2600 North Central Avenue
Phoenix, Arizona 85004.

These firms have mining, smelting, and refining facilities in Arizona, Colorado, Idaho, Illinois, Missouri, Montana, Nebraska, New Mexico, Oklahoma, Tennessee, and Texas.

II. The Existence and Importance of Canadian Federal and Provincial Government Subsidies

The members of the NFMPC believe strongly in free trade shaped solely by international market forces. The U.S. non-ferrous metals industry enjoys precious little in the way of protection or government support. It would be vastly better off competing in a world free of trade restrictions and government subsidies. But that is not what the Canadian Agreement creates for natural resource industries such as ours. Canada has substantial federal and provincial government subsidies for its industries. Yet this Agreement (unlike the Israel Free Trade Agreement) is entirely silent concerning such subsidies; there is no provision in the Canadian Agreement for their elimination or reduction. In effect, the Agreement tacitly endorses these blatant subsidy practices and encourages their continuation. Early in the negotiations, the NFMPC had been assured by the Administration that it viewed the Canadian subsidies to the non-ferrous metals industry as incompatible with a free trade area. The NFMPC is dismayed that at the last minute, other considerations dictated the outcome.

The Administration is fully aware of the Canadian subsidy programs. Not only has the NFMPC provided information directly to the Office of the United States Trade Representative (USTR) documenting such subsidies, but USTR itself has also conducted an investigation at our organization's request under Section 305 of the Trade Act of 1974, as amended, to obtain additional information from the Canadian Government about such programs. What USTR found was that a variety of programs exist which provided financial and other assistance to the Canadian non-ferrous metals industry.

Even a U.S. Department of Commence study specifically cites the importance of Canadian subsidy programs in its industrial policy. The Commerce Department's "Trade-Related Investment Measures Inventory" (draft 12/9/87) states concerning Canadian "incentives":

> Canadian Federal and Provincial Governments maintain a complex of programs through which a variety of subsidies and grants to industry are provided. ... Several large U.S. companies have made locational decisions based on the granting of Canadian Government financial incentives. The former Department of Regional Industrial Expansion (DRIE) provided about C$848 million of contributions to the private sector in FY-1987. The Provinces also provide generous incentives to industry.

It should be realized that there is even objection to such subsidies in Canada. Their importance to the Canadian mining and metal industry was expressed with great clarity by an editorial in the widely-read Canadian mining publication Northern Miner (June 16, 1986). The editorial acknowledged the NFMPC's Section 305 request, discussed aspects of the free trade negotiations, and candidly stated:

> Fact is, subsidies have become a way of business life in Canada today, a trend that is growing faster than in any other major industrial country. Little wonder that Ottawa runs up a $30 billion annual deficit.

Of the subsidy programs for non-ferrous metals, three stand out as clear demonstrations of the commercial importance of such governmental assistance.

A. Cominco Ltd.'s Lead Smelter at Trail, British Columbia

According to information provided by USTR, the Canadian federal government and the British Columbia provincial government have made available to Cominco Ltd., a Canadian metals producer, C$134 million for the complete modernization of its lead smelter in Trail, British Columbia, largely to process ores from the Red Dog Mine in Alaska. Under the arrangement, the Canadian government has essentially assumed the major risks associated with the modernization, particularly the risk of metal price fluctuations. For example, if metal prices should be below a certain threshold, the assistance takes the form of a grant and requires no repayment whatsoever. The NFMPC understands that even at the current relatively high metal prices, no repayment is required. Assuming grant treatment and production at peak capacity, the assistance could have a subsidy effect of nearly 5 cents per pound of lead produced, which is equivalent to 13 percent of the 1987 average price of 36 cents per pound (Metals Week).*

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* As a commodity product, the price of lead metal fluctuates. During the 1987 peak price months, the subsidy represented 11 percent of the 42 cents per pound price, but during the lowest price period in March 1987, the subsidy was the equivalent of 17 percent of the 26 cents per pound price.

There currently is an oversupply of lead smelting capacity in the world. In the U.S. alone, several smelting operations have been shut down for lack of raw material to process. Yet, by stepping in to bear a major portion of the cost and risk of building a new, state-of-the-art "QSL" smelting and refining plant in British Columbia, the Canadian government is in effect attempting to ensure that otherwise uncompetitive Canadian smelting and refining capacity will survive. Ultimately, the Trail smelter will begin processing concentrate from the Red Dog mine which could have been smelted in a U.S. facility.

B. Noranda Ltd.'s Copper Smelter at Rouyn, Quebec

In the Canadian acid raid program, an additional C$300 million in Canadian federal and provincial funds have been made available for smelter pollution control and modernization.* Of this sum, C$84 million has already been allotted for the Noranda copper smelter at Rouyn, Quebec. The Rouyn assistance represents two-thirds of the cost of plant moderization and a moderate degree of pollution control. The output from this smelter is to be directed at the U.S. market. The Hudson Bay Mining & Smelting zinc smelting and refining facility located at Flin Flon, Manitoba, is also eligible for this assistance.

Although the complete terms of repayment for the Noranda assistance have not been made public, it has been reported that (1) the interest rate being paid is 1-2 percent below what Noranda would have paid on a corporate loan in the market, (2) a portion of the repayments due in a year can be deferred if copper prices fall below a certain level, and (3) at least some repayment will be forgiven if the funds are reinvested in certain facets of the facility. Clearly, U.S. smelters do not enjoy pollution control financing which is nearly so concessionary.**

C. Cyprus Anvil Zinc Mine at Faro, Yukon

The Yukon Government provided an 85 percent guarantee of C$15 million in financing for the reopening in 1985 of the Cyprus Anvil zinc mine, located in Faro, Yukon. The Canadian federal government in turn re-guaranteed 90 percent of the provincial guarantee. U.S. government contacts with the Canadian government indicate that an additional C$10 million package of benefits including grants, a second mortgage, and government purchase of certain properties have been provided. The Cyprus Anvil mine, which reportedly could supply 3 percent of world zinc production, had been closed by Dome Mines, its previous owner, in mid-1982 because of high costs and declining zinc prices. In 1985, Curragh Resources purchased the property and, with the help of government assistance has reopened it.

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* The Canadian federal government has provided C$150 million which is being matched by C$150 million from the provinces. See Environment Canada, Taking Action Against Acid Rain, March 1986, section "3. Provide $150 million for Emission Control at Smelters," p.4.

** Although U.S. smelters try to recoup some of the cost of pollution control by selling the captured sulfur in the form of sulfuric acid, their efforts will be increasingly thwarted by lower priced Canadian sulfuric acid exported to the United States from Canadian pollution control-related acid plants financed with Canadian Federal and Provincial Government assistance.

D. Possible Future Subsidies

There is no indication that the Canadian government intends to moderate its subsidy practices. A possible future subsidy of concern to the U.S. industry involves Noranda's Gaspe copper mine at Murdockville, Quebec, which was closed in April 1987 because of a fire. Noranda is reportedly seeking a C$20 million interest-free loan from the Quebec government for the rehabilitation of the mine which supplies feed to Noranda's Gaspe smelter. According to recent press reports, discussions have been put off until July 1988 for reasons that have not been stated.

III. The Binational Dispute Resolution Panel: Weakening U.S. Relief Against Subsidized Imports

The Agreement's dispute settlement provisions abolishing judicial review regarding unfair trade practices are also a matter of great concern to the NFMPC. Given the trade Subcommittee's vital role in assuring the enforcement of U.S. trade laws, the NFMPC believes that the provisions should be of concern to the Subcommittee as well. Without judicial review, the Executive Branch cannot be prevented from placing political expediency and non-trade-related foreign policy concerns ahead of the fair and impartial enforcement of the law as created by the Congress.

There are a number of questions raised by the dispute settlement proposal itself, relating to whether the legal rights of U.S. parties would be protected and whether U.S. companies would receive fair and equal treatment. Our overriding concern lies in the dominant role of governments before the proposed dispute panels and the heavy reliance upon the Administration in office in proceedings before a panel. How can we be certain that a future Administration would deal fairly with a petition for review brought by a U.S. party, particularly in light of possible broader policy considerations and particularly when contrasted with the more cooperative relationship between industry and government that exists in Canada?

There are also no provisions for minimum standards for the selection of the roster -- from both sides of the border -- to serve on binational panels. For example, there should at least be a required Code of Conduct for both U.S. and Canadian roster members, with measures dealing with such issues as conflict of interest or individuals seeking political office. There should be criteria for disqualifying individuals from a panel and for challenging panelists. Even if U.S. implementing legislation deals with these issues, what quarantees exist to provide these protections with respect to Canadian panelists?

IV. Negotiation of New Rules on Unfair Pricing and Government Subsidization

The Agreement provides for up to 7 years of negotiations with Canada on the development of new rules on unfair pricing and government subsidization. While it is uncertain at best how anxious the Canadians will be to accept rules forbidding their subsidy practices, the NFMPC has become alarmed recently at this Administration's apparent view as to what the outcome of such negotiations should be. Assistant Attorney General for Antitrust Charles Rule, for example, seems to have concluded in a recent speech that U.S. laws against unfair trade practices should be replaced with simple reliance on the antitrust laws.* This sentiment was ominously echoed by Ambassador Yeutter in his oral response to questions from the Trade Subcommittee on February 9, when he listed such an outcome as among the possible results of such negotiations. Would it not be truly perverse if a negotiation designed to eliminate subsidies ended up merely eliminating the current discipline over them?

V. The Canada Agreement as a Precedent for the Uruguay Round Trade Negotiations and Other Bilateral Agreements

The Administration has proclaimed the Canada Agreement an excellent model for emulation in the Uruguay Round trade negotiations and for other bilateral agreements. Yet in spite of the proclaimed U.S. goal of removing subsidy practices from the global trading system, the Canada Agreement clearly sends the wrong message to the United States' other trading partners. If, in the negotiation of an agreement with our most important trading partner, the United States fails to achieve the slightest concession on Canadian industrial subsidies, how can we expect the Uruguay Round participants (including Canada itself) to take seriously our calls for discipline on their subsidies?

VI. Canada's Position in the U.S. Non-Ferrous Metals Market

Congress should have no doubt that the Canadians fully understand just what this Agreement -- in all of its aspects -- will do for their non-ferrous metals industry. A study by the Canadian Department of Energy, Mines, and Resources reportedly has concluded that one of the most significant effects of the Agreement will be to increase Canadian exports of non-ferrous metals to the United States.**

Combining the effects of the unrestrained continuation of Canadian subsidies and the elimination of U.S. non-ferrous metals tariffs, the NFMPC fears that the Canadians may be dead right in this conclusion. Given that there is very limited prospect for major expansion of copper, lead, or zinc mine production in Canada itself, the Canadian smelting industry will increasingly have to look to non-Canadian mines, particularly in the United States and Chile, for concentrate feed. Those concentrates will be smelted in subsidized Canadian facilities and returned to the United States duty free as refined metal.

Canadian non-ferrous metal producers are already quite able to compete successfully in the U.S. market in spite of the current U.S. tariffs as evidenced by the fact that they already supply from 42 percent to 93 percent of the U.S. imports of the products and by-products of these industries. The NFMPC is particularly concerned that a U.S.-Canada Trade Agreement will lead to still further inroads by Canada into the U.S. market for these products.

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* Charles F. Rule, "Reconciling Antitrust and International Trade Policy -- Ensuring U.S. Competitiveness in the 21st Century," speech before the Antitrust Law Section Annual Meeting, New York State Bar Association, January 27, 1988.

** International Trade Reporter, February 10, 1988, pp. 175-176.

In 1987, the Canadian shares of U.S. imports of each of the products of concern were as follows:

TSUSA Number	Product	Canadian Share of U.S. Imports for Consumption
612.0640 612.7260	Refined Copper Continuous cast copper rod	44%
624.0350	Unwrought, unalloyed lead	47%
626.0200	Unwrought, unalloyed zinc	51%
473.7600 473.7800	Zinc oxide	51%
632.1440	Cadmium, other than waste and scrap	42%
416.3500	Sulfuric acid	93%

VIII. Congress Should Not Approve the Canadian Agreement In Its Current Form

Over the past five years, the U.S. non-ferrous metals industry has gone through a grueling restructuring to reduce costs and increase efficiency to achieve true international competitiveness. Key to the success of this effort have been the sacrifices of our workers and management alike in lost jobs and reduced pay and benefits. How can the U.S. industry now ask these workers to compete against a Canadian industry which is fundamentally no more competitive than the U.S. industry but is stronger solely because it receives Canadian government subsidies?

The best solution to the problems discussed in this statement is for the Executive Branch to return to the negotiating table with the Canadians to conclude a new Agreement achieving at least the elimination of Canadian subsidy practices. Short of that, the Agreement's implementing legislation should contain strong incentives for the elimination of the subsidies. One such approach would make the elimination of subsidies a condition for the phase out of the non-ferrous metals duties.

APPENDIX

U.S. Tariffs on Primary Non-Ferrous Metals and Related Products

	1988 Import Tariff
Primary Copper	
Refined Copper, TSUSA 612.0640 (H*7403.11.00)	1% *ad val*.
Continuous cast rod, TSUSA 612.7260 (H*7408.11.60)	4% *ad val*.
Primary Lead	
Unwrought lead other than lead bullion, TSUSA 624.0350 (H*7801.10.0000)	Temporary duty of 3% *ad val*. on the value of the lead content, but not less than 1.0625¢ per lb. on the lead content. Permanent duty of 3.5% *ad val*.
Primary Zinc	
Unwrought zinc other than alloys of zinc, TSUSA 626.0200 (H*2620.11.0000)	1.5% *ad val*.
Related Products	
Zinc Oxide, TSUSA 473.7600 (H*2817.00.000,) and TSUSA 473.7800 (H*3206.49.3000)	Dry: Free. Other: 1.3% *ad val*.
Cadmium, TSUSA 632.1440 (H* 8107.10.0000)	Free
Sulfuric acid, TSUSA 416.3500 (H* 2807.00.000)	Free

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* Harmonized System Classification Number.

Chairman Gibbons. Now, Mr. Fink.

STATEMENT OF MARVIN FINK, PRESIDENT, ALLIED METALS CO., REPRESENTING INDEPENDENT ZINC ALLOYERS ASSOCIATION, ACCOMPANIED BY R.M. COOPERMAN, EXECUTIVE DIRECTOR

Mr. **Fink**. Thank you, Mr. Chairman.

My name is Marvin Fink. I am the president and owner of Allied Metals Co., and my main address of my zinc alloying operations is 2059 South Canal Street, Chicago, IL.

I am accompanied by Mr. Cooperman of the Independent Zinc Alloyers Association.

I feel a little humble following my Governor in disagreeing with him. However, the independent zinc alloyers, one of the three surviving segments of the domestic zinc industry, is now threatened with the same extinction that has overcome the basic zinc industry—that of mining and smelting zinc.

Our zinc producing industry in the United States is now down to two U.S. companies, one of which is for sale.

We use something over 1 million tons of zinc each year. The U.S. mining-smelting industry can supply only 20 percent, and the rest must be imported.

Zinc is an essential material for our economy. Our automobiles, computers, the hardware for our homes, some parts of our golf clubs, and major elements of our electrical generators contain zinc. A substantial part of these contents are zinc die-castings, which are made from zinc alloy which we produce.

Currently, there are 26 companies in the United States that produce the zinc alloy from which die-castings are made. They are a conduit for approximately 250,000 tons of the zinc consumed in this country and channeled from their plants to consumer products through the zinc die-casting industry.

Congress as a matter of public policy established a tariff on zinc alloys in the 1920s. It reviewed it at the end of the 1950s and restated it in a tariff law of 1961. Zinc alloy has been protected from imports for about six decades. That protection was reiterated as recently as 1979 when the Trade Policy Staff Committee and the Office of the U.S. Trade Representative (USTR) excepted the duty on zinc alloy from the Tokyo GATT round and our trading partners agreed to the exception.

We are now in an era of striving almost desperately to preserve jobs and industrial capability in this country. There is no stronger evidence of this effort than the pending omnibus trade bill.

Just a week ago, in the business section of the Washington Post, Firestone Tire & Rubber Corp., announced that Bridgestone Corp., Japan's largest tire maker, would acquire a 75 percent stake in the business, paying about $1.25 billion to Firestone for "the price of admission to the U.S. market."

The Free Trade Area Agreement (FTA) between the United States and Canada is about to enable four world-class zinc producers in Canada to enter and capture the U.S. independent zinc alloying market for free. And, after they capture it, we will protect them with a 19 percent ad valorem duty from foreign competition. The Canadians, in other words, will get my protection. In addition to the job and economic hardship this action will bring to the domestic industry, we cannot help but feel and look a little foolish to the international trading community.

Since the agreement was signed by the President and the Prime Minister of Canada—and I am referring to the same publication Mr. Muth referred to, the Metals and Minerals Directorate of the Canadian Department of Regional Industrial Expansion, and I am quoting from page 22, where it says: "* * * a potential investor is heavily influenced by both tariff levels and tariff structures when deciding where to locate a processing plant", and the "U.S. 19 percent tariff on zinc alloy has effectively retarded the establishment of a large zinc alloy industry in Canada."

On page 4, the report states:

> The economic benefits from the Canada-United States Free Trade Agreement will begin to be realized shortly after the implementation of the Agreement, on January 1, 1989. Prices for a wide range of consumer goods will be lower, expanding the purchase power of Canadian households. Investment in plant and equipment will expand as Canadian firms move to take advantage of their enhanced access to the huge U.S. marketplace.

In short, the Canadian Government has set as policy its intention of capturing the U.S. zinc alloy market for its own zinc industry.

Mr. Chairman, all of this may be a wonderful argument for purists. But it crucifies me on the cross of free trade. I have just purchased and spent hundreds of thousands of dollars to rehabilitate and reorganize a plant in Chicago, and I might add it is in Chairman Rostenkowski's district. This plant had been shut down, its equipment was not operating and there were no employees. Now it is functioning and employs people from the urban center of Chicago. In fact, we were encouraged by the State Government to develop this abandoned property and help revitalize the community.

The four world-class zinc producers in Canada are each capable of producing zinc alloy at approximately 80 percent of the cost of the 26 independent zinc alloyers who are located across our country, including myself. As the duty on zinc alloy phases down over 10 years, it is apparent from studies that by the end of the third year the Canadian zinc producers will be able to compete with, if not undersell, the U.S. independent zinc alloyers. In other words, they can capture our market and shut down my Chicago plant again.

Mr. Chairman, the concept of a trade agreement between the United States and Canada undoubtedly has merits in principle and in general and unfortunately that is the way it was negotiated by the USTR. However, in specifics, such as the independent zinc alloying industry, to which the USTR paid lipservice only, the FTA is a devastating reversal of long-standing public policy under which this industry has operated.

The Canadians are alert to the effects of the FTA on their own import-sensitive industries. Effective January 28, 1988, the Canadian Government has circumvented the FTA by restricting imports to Canada of several dairy products. Pursuant to Canada's "Export and Import Permits Act", Ottawa has placed on its import control list ice cream, ice milk, yogurt, skim milk and buttermilk. In effect, the Canadians have placed a quota on certain dairy products exported from the United States to protect its domestic industry from U.S. competition.

Mr. Chairman, we have not been dealt with fairly. Last year, in conversations with a half dozen independent zinc alloyers in his office, Ambassador Peter Murphy represented that if there were exemptions for any industry from the FTA, other U.S. industries and specifically the independent zinc alloyers would have to be accorded equal consideration. The U.S. maritime industry has been exempted from the agreement, but there has been no communication from Mr. Murphy's office on the subject.

Mr. Chairman, my company and the industry of which it is a part has produced vital materials for basic U.S. industries, generated taxes, employed largely urban center personnel, and contributed to the economic welfare of the United States It deserves better treatment than it is being given and certainly equal treatment accorded the Canadian dairy products industry by the Ottawa Government.

Thank you for the opportunity to appear before you today.

Chairman GIBBONS. Thank you.

[The statement of Marvin Fink follows:]

STATEMENT OF MARVIN FINK, INDEPENDENT ZINC ALLOYERS ASSOCIATION, INC.

Mr. Chairman, my name is Marvin Fink, President and owner of Allied Metals Company and the main address of my zinc alloying operation is 2059 S. Canal Street, Chicago, IL 60616.

The independent zinc alloyers, one of the three surviving segments of the domestic zinc industry, is now threatened with the same extinction that has overcome the basic zinc industry -- that of mining and smelting zinc.

Our zinc producing industry in the U.S. is now down to two U.S. companies, one of which is for sale.

We use something over one million tons of zinc each year. The U.S. mining-smelting industry can supply only 20% of this and the rest must be imported.

Zinc is an essential material for our economy. Our automobiles, computers, the hardware for our homes, some parts of our golf clubs, and major elements of our electrical generators contain zinc. A substantial part of these contents are zinc diecastings.

Currently, there are 26 companies in the United States that produce the zinc alloy from which diecastings are made. They are a conduit for approximately 250,000 tons of the zinc consumed in this country and channelled from their plants to consumer products through the zinc diecasters.

This industry, as a matter of public policy established in the 1920's, reviewed at the end of the 1950's, and restated in the tariff laws of 1961, has been protected from imports. That protection was reiterated as recently as 1979 when the Trade Policy Staff Committee and the Office of the United States Trade Representative (USTR) excepted the duty on zinc alloy from the Tokyo GATT Round and our trading partners agreed to the exception.

We are now in an era of striving almost desperately to preserve jobs and industrial capability in this country. There is no stronger evidence of this effort than the pending Omnibus Trade Bill.

Just a week ago, in the business section of the Washington Post, Firestone Tire and Rubber Corporation announced that Bridgestone Corporation, Japan's largest tire maker, would acquire a 75% stake in the business, paying about $1.25 billion to Firestone for "the price of admission to the U.S. market."

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Since the agreement was signed by the President and the Prime Minister of Canada, the Metals and Minerals Directorate of the Canadian Department of Regional Industrial Expansion has published a document, "The Canada-U.S. Free Trade Agreement and Minerals and Metals."

At page 22, it says:"...a potential investor is heavily influenced by both tariff levels and tariff structures when deciding where to locate a processing plant" and the "U.S. 19% tariff on zinc alloy has effectively retarded the establishment of a large zinc alloy industry in Canada."

On page 4, the report states: "The economic benefits from the Canada-U.S. Free Trade Agreement will begin to be realized shortly after the implementation of the Agreement, on January 1, 1989. Prices for a wide range of consumer goods will be lower, expanding the purchase power of Canadian households. Investment in plant and equipment will expand as Canadian firms move to take advantage of their enhanced access to the huge U.S. marketplace."

In short, the Canadian government has set as policy its intention of capturing the U.S. zinc alloy market for its own zinc industry.

Mr. Chairman, all of this may be a wonderful argument for free trade purists. But it crucifies me on the cross of free trade. I have just purchased and spent hundreds of thousands of dollars to rehabilitate and reorganize a plant in Chicago and I might add it is in Chairman Rostenkowski's district. This plant had been shut down, its equipment was not operating and there were no employees. Now it is functioning and employs people from the urban center of Chicago.

The four world-class zinc producers in Canada are each capable of producing zinc alloy at approximately 80% of the cost of the 26 independent zinc alloyers who are located across our country, including myself. As the duty on zinc alloy phases down over 10 years it is apparent from studies that by the end of the third year the Canadian zinc producers will be able to compete with if not undersell the U.S. independent zinc alloyers. In other words, they can capture our market and shut down my Chicago plant again.

It is as though the FTA were to establish a super legislative body to compete with the Congress within three years and then usurp congressional powers and prerogatives. Indeed, this is not a fanciful thought because the agreement has created a superjudicial bi-national panel under which certain trade disputes between the U.S. and Canada can be resolved without recourse to U.S. courts whose judges and justices were confirmed by the Congress.

Mr. Chairman, the concept of a trade agreement between the U.S. and Canada undoubtedly has merits in principle and in general and unfortunately that is the way it was negotiated by the USTR. However,in specifics, such as the independent zinc alloying industry, to which the USTR paid lip service only, the FTA is a devastating reversal of long-standing public policy under which this industry has operated.

The Canadians are alert to the effects of the FTA on their own import-sensitive industries. Effective January 28, 1988, the Canadian government has circumvented the FTA by restricting imports to Canada of several dairy products. Pursuant to Canada's "Export and Import Permits Act," Ottawa has placed on its import control list ice cream, ice milk, yogurt, skim milk and buttermilk. In effect, the Canadians have placed a quota on certain dairy products exported from the U.S. to protect its domestic industry from U.S. competition.

Mr. Chairman, we have not been dealt with fairly. Last year, in conversations with a half dozen independent zinc alloyers in his office, Ambassador Peter Murphy represented that if there were exemptions for any industry from the FTA, other U.S. industries and specifically the independent zinc alloyers would have to be accorded equal consideration. The U.S. maritime industry has been exempted from the agreement, but there has been no communication from Mr. Murphy's office on the subject.

Mr. Chairman, my company and the industry of which it is a part has produced vital materials for basic U.S. industries, generated taxes, employed largely urban center personnel, and contributed to the economic welfare of the U.S. It deserves better treatment than it is being given and certainly equal treatment accorded the Canadian dairy products industry by the Ottawa government.

Thank you for the opportunity to appear before you today.

Chairman GIBBONS. Our next witness is Mr. Werner.

STATEMENT OF JEFFRY A. WERNER, SENIOR VICE PRESIDENT, CHAPARRAL STEEL CO., PRESENTED BY CHARLES VERRILL COUNSEL

Mr. VERRILL. Thank you. Jeff Werner, who was scheduled to be here today, has unfortunately been detained in Texas and has asked I present his statement for him. For the record, I am Charles Verrill of Wyley, Rein & Fielding, counsel to Chaparral Steel Co. Mr. Werner regrets his inability to be here and hopes it will not be a cause of any inconvenience to the subcommittee.

Chaparral asked for an opportunity to appear here today to urge that the United States-Canada Free Trade Agreement, and the implementing legislation to be submitted later this year, be adopted by Congress. Chaparral supports the free trade agreement because of the company's assessment that it will in the long and short term be in the best interests of both the United States and of the company.

Chaparral is a steel manufacturer; it produces rebars, structurals and special bars primarily for the construction industry. Chaparral sells principally in the United States, but is increasingly looking to the export markets. A year ago, Chaparral began shipping structural steels to Canada and now supplies a significant share of the market there in certain size ranges. Chaparral has shipped to Europe and is taking the steps necessary to be fully competitive in the Japanese market. Assuming that Mexico continues to liberalize its import regulations, Chaparral sees sales opportunities in that country as well.

As a steel manufacturer with a view toward markets outside the United States, Chaparral believes there are distinct advantages that will flow from the free trade agreement. These include, first, the rules of origin. These rules will enable the Customs Service to clearly identify steel made in Canada or substantially transformed there and to distinguish it from steel shipped through Canada from third countries. These rules will enhance enforcement for the President's steel program by identifying steel entering from Canada that is properly allocated to an arrangement country.

Second, there is the likelihood that implementation of the agreement will result in continued steady appreciation of the Canadian dollar. It seems to Chaparral more than coincidental that the Canadian dollar appreciated against the U.S. dollar during the entire free trade negotiations. As of a year ago, the Canadian dollar was worth around 72 cents, whereas last week it closed at 79 cents; an appreciation of more than 10 percent. This appreciation makes Canadian goods, including steel, more realistically priced on the U.S. market. At the same time, Chaparral received more revenues for the already substantial tonnages the company sells in Canada.

Third, Chaparral, like many of the other minimills in this country, is energy intensive. It melts scraps in electric furnaces and uses large quantities of electricity. It seems inevitable that the free trade in energy provisions of the agreement will at least indirectly benefit these steel and energy-consuming industries.

The principal problem Chaparral has with the agreement is the delay in elimination of the tariffs on structural steel. Under the agreement tariffs on steel, which are much higher in Canada than in the United States, will not be eliminated on the effective date. Instead, those tariffs will be phased out over 10 years. This long-term phase-out was a disappointment to Chaparral and the other structural steel producers, which had urged Ambassador Yeutter and the USTR staff to negotiate an immediate duty elimination on structural steels. The U.S. duty on these products is only 0.9 percent, which is in stark contrast to the Canadian duty of 6.8 percent. This 5.9 percent differential is larger than any other difference between United States and Canadian duty rates on major steel products. Moreover, the U.S. tariff is the lowest duty in the United States on any steel product.

Given these disparities, Chaparral argued that the phase-out over 10 years would be of no benefit to the U.S. producers and would unjustifiably delay the advantages that duty-free entry of structural steels into Canada would provide. Virtually all of the domestic producers of the structural steels joined Chaparral in support of the immediate tariff elimination.

The final agreed-on text of the free trade agreement, however, includes all steel products, including structurals, in the 10-year phase-out category. While we recognize the practicalities and politics that led to this result, it is still far from clear why, when virtually all of the U.S. producers have requested that the tariffs on a particular product be eliminated immediately, an exception could not have been made. Ambassador Yeutter has drawn to Chaparral's attention the clause in the agreement that permits product-by-product acceleration of tariff reductions and has assured Chaparral that the USTR would be prepared to consider recommendations after approval of the agreement to accelerate tariff reductions.

Chaparral intends to pursue acceleration at the earliest opportunity. In this regard, we think it is important that this committee ensure that the implementing legislation and the report language make provision for effective use of the acceleration clause by industries where, as is in the case of structural steels, long-term phase-out makes no sense and adversely affects U.S. producers. This committee should ensure that the acceleration clause can be aggressively used to ensure the full benefits of the agreement and that it does not become simply an adornment.

That concludes my summary of Mr. Werner's testimony. I ask that the text be included in the record, and I am prepared to respond to any questions the committee may have. If I don't have the answers, I would be glad to provide the information later.

[The statement of Jeffry A. Werner follows:]

BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

RE: PUBLIC HEARINGS ON THE
UNITED STATES - CANADA
FREE TRADE AGREEMENT

Testimony of Jeffry A. Werner, Senior Vice President
Chaparral Steel Company
300 Ward Road
Midlothian, Texas 76065
(214-775-8241)

Good morning. I am Jeffry A. Werner, Senior Vice President (Commercial) of Chaparral Steel Company, 300 Ward Road, Midlothian, Texas. I am accompanied by Charles Owen Verrill, Jr. of Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, D.C. 20006, Counsel to the company.

Chaparral supports the Free Trade Agreement that has been negotiated between the United States and Canada and urges this Committee to report favorably on the implementing legislation when it is submitted to Congress later this Spring. Before I explain why Chaparral supports the Free Trade Agreement, I would like to briefly describe the company.

Chaparral is a steel maker. At our plant in Midlothian we manufacture structural steels, bar shapes and rebar. These steels are known as "long products" and are used in the construction of roads, highways and buildings. In the United States today, these products (which account for almost a third of total steel consumed) are primarily made by the electric furnace, continuous cast process in facilities, like those at Chaparral, that are usually characterized as mini-mills. This is something of a misnomer as applied to Chaparral as we now produce over a million tons of steel a year.

Chaparral melts raw steel from the one and a half million tons of scrap we purchase annually. About a third of this scrap arrives in the form of automobile hulks (400,000 a year) which we shred at the plant; the rest is purchased from dealers. The molten steel is cast into billets that are then rolled into diverse long products. We stress productivity and last year needed only 1.5 man hours for each ton produced. This labor utilization rate (which puts our labor cost per ton under $30) is, we believe, as good as any other mill in the world.

Chaparral sells principally in the United States but we are increasingly looking to the export markets. A year ago we began shipping structural steels to Canada and now supply a significant share of the market there in our size ranges. We have shipped to Europe and are now taking the steps necessary to be fully competitive in the Japanese market. Assuming that Mexico continues to liberalize its import regulations, we see sales opportunities in that country as well.

As a steel producer, we are aware that the Steel Caucus has expressed reservations about the Free Trade Agreement in the absence of an arrangement to restrain imports pursuant to the President's Steel Program. We understand, however, that the United States and Canada have recently reached an accommodation whereby there will be monitoring of steel imports from Canada on a product-by-product basis, and when the imports in any product line exceed historic levels, there will be consultations between the two governments as to that product. This would appear to be an equitable response to the concerns that have been expressed by the Caucus and we feel that the U.S.T.R.'s attention to the issue should be added to reasons why the Free Trade Agreement should be approved.

Aside from the import issue, it is clear to us that the advantages of the Agreement, over the short and long term, are significant, both for the United States as a whole and for our company in particular. For the steel industry, the rules of origin in the Agreement will go a long way toward resolution of the problems that have arisen in determining the country of origin of steel products imported from Canada. The energy measures are expected to increase electricity imports from Canadian hydro-electric projects that have surplus capacity and very favorable costs and there are specific provisions that assure the availability of energy supplies during periods of shortage. While we in Texas do not expect any immediate benefit from the energy provisions, we nevertheless are convinced they are in the long term best interests of the country.

The elimination of tariffs on goods traded between the United States and Canada was a key negotiating objective. Under the Agreement, however, tariffs on steel, which are much higher in Canada than in the United States, will not be eliminated on the effective date, but instead will be phased out over ten years. This long-term phase out was a disappointment to Chaparral and the other structural steel producers which had urged Ambassador Yeutter and the U.S.T.R. staff to negotiate on immediate duty elimination on structural steels classified in T.S.U.S. Items 609.8010 through 609.8090. The U.S. duty on these structurals is only 0.9 percent, which is in stark contrast to the Canadian duty of 6.8 percent. This 5.9 percent differential is larger than any other difference between U.S. and Canadian duty rates on major steel products. Moreover, the U.S. tariff of 0.9 percent is the lowest duty on any steel product. At an illustrative selling price of $300 (U.S.) per ton, the tariffs are, therefore, $20.40 on shipments into Canada but only $2.70 on sales from Canada into the United States.

Given these disparities, we argued in our presentation to U.S.T.R. that the phase out would be of no benefit to U.S. producers and would unjustifiably delay the advantages that duty free entry of structurals into the Canadian market would provide. Virtually all of the producers of the angles, shapes and sections classified in T.S.U.S. 609.8010 to 609.8020 joined us in support of immediate tariff elimination. The other companies that supported this effort were NUCOR Corporation, Charlotte, North Carolina; Northwestern Steel and Wire Co., Sterling, Illinois; Bayou Steel Corporation, LaPlace, Louisiana; and Structural Metals, Inc., Seguin, Texas.

In presenting our position, we pointed out that the very purpose of a bilateral free trade agreement is to achieve broad trade liberalization for the mutual benefit of the participating countries. Ideally, tariffs on goods traded between the countries would be completely eliminated upon entry into force of the agreement. Exceptions should be made only if it is clear that disruption would occur in a particular market, thus justifying an adjustment period.

In the case of structural steel, there was no justification for such an exception since trade liberalization would have no adverse effects on the producing industry in the United States which is increasingly dominated by efficient and competitive mini mills. Nor do we envision any adverse effect on Canadian producers from eliminating their duties on the effective date of the Agreement given the relative import shares those producers have in the U.S. market. (See Appendix I).

Regrettably, the final agreed-on text of the Free Trade Agreement includes all steel products, including structurals, in the ten year phase out category. While we recognize the practicalities and the politics that led to this result, it is still far from clear why, when virtually all the U.S. producers had requested that the tariffs on a particular product be eliminated immediately, an exception could not have been made.

Ambassador Yeutter has drawn to Chaparral's attention the clause in the Agreement that permits product by product acceleration of the tariff reductions and has assured us that U.S.T.R. "would be prepared to consider recommendations, once the FTA has been approved, to accelerate tariff reductions." We, of course, intend to pursue acceleration of structural tariff reductions at the earliest opportunity. In this regard, we urge this Committee to include in the implementing legislation and report language provision for effective utilization of the acceleration clause by industry where, as in the case of structural steels, long term phase out makes no sense and adversely affects U.S. producers. This Committee should ensure that the acceleration clause can be aggressively used to achieve the full benefits of the Agreement and is not simply an adornment.

Aside from tariff reductions, Chaparral expects that the Free Trade Agreement will have a positive effect on exchange rates. We are aware that there have been complaints that the Agreement does not contain an exchange rate consultation mechanism. In our opinion, such a provision seems unnecessary. As Secretary Baker testified the other day, Canada and the United States are both part of the Group of Seven which considers exchange rate issues on an on-going basis. Given that consultative framework, bilateral consideration of the same issue would be redundant, particularly as we are not aware of any indication that there has been manipulation of exchange rates in Canada for trade purposes.

During the last year, the value of the Canadian dollar relative to the U.S. dollar has crept steadily upward so that as of last Thursday the rate stood at .7905, which reflects a substantial appreciation from a year earlier. We think it is significant that this appreciation occurred during and after the final negotiation of the Free Trade Agreement and its execution by both governments. Moreover, the elimination of tariffs, which are much higher in Canada than in the United States, is itself a positive harbinger that the exchange rate will continue toward parity or equilibrium at a higher level than now exists. Indeed, as the markets become increasingly integrated, it is difficult to see how a significant disparity in exchange rates could, in fact, occur again in the future.

A unique feature of the Free Trade Agreement, which we find wholly acceptable, is the provision for review of countervailing duty and antidumping orders by a binational tribunal in lieu of the appellate courts. While we appreciate many of the arguments that may be raised against this procedure, we are not troubled by them. While judicial review is an important -- if not vital -- part of trade law administration, it can be slow. Our counsel argued an appeal from an International Trade Commission decision before the Court of International Trade last July in a case in which the ITC essentially admitted error. Yet today, seven months later, we still do not have a decision. As we read the binational review procedures, it is quite possible that appeals will be disposed of much more quickly by the tribunal than by our courts particularly if you take into account the possibility of appeal to the Court of Appeals for the Federal Circuit.

Secondly, we derive assurance of fair treatment from the fact that the negotiators took pains to provide that the tribunal would apply the law of the jurisdiction where the proceeding took place. Therefore, one can expect that the tribunal's decisions would be consistent with precedents established by the CIT or CAFC. And, should a tribunal decision be reached that is manifestly out of line with precedent, the binational dispute procedures could be invoked.

Chaparral is, in fact, encouraged that the United States and canada have agreed to negotiate a substitute for the application of the antidumping and countervailing duty laws between the two countries within five years. Failure to agree on a substitute would entitle either to withdraw from the Agreement. In our view, this provision was drawn to establish an environment in which a substitute system is almost inevitable. As a company that anticipates increased exports to Canada, we believe there are modifications and/or substitutions for the existing laws that are likely to be necessary for a free trade area.

As the Committee is no doubt aware, the dumping laws operate to the disadvantage of U.S. producers whose principal market is located some distance from the Canadian border. This is because the selling price that is used to establish fair value is determined where the majority of sales are made and that is normally the region closest to the factory. When Chaparral sells outside the Texas area, such as in Canada, or even in Buffalo, it is necessary to absorb freight even though the same price is charged net to the customer. Because freight is deducted in fair value calculations, we therefore run the risk of dumping actions simply because of the quirk of the location. (For example, assume Dallas is our principal market as measured by volume. If freight to Buffalo and Toronto is $50, and our customers in Dallas, Buffalo and Toronto all pay $300 per ton, our mill net is $300 for sales in Dallas and $250 for sales in Buffalo and Toronto. In this scenario, we could be considered to be dumping in Canada by a margin of $50).

Chaparral has long supported both the spirit and concept of the unfair trade laws. However, given the economic integration that the Free Trade Agreement is expected to achieve, the normal dumping rules may well prove not to be appropriate trade regulators in every respect. The five year period for consideration of alternatives should be sufficient to sift through the current rules and evolve a substitute acceptable to both countries and their industries and which would accommodate the legislative concerns these laws address. We look forward to an opportunity to comment during this process.

SUMMARY

As a growing, innovative, productive and profitable steel company, we hope that our comments on the U.S./Canada Free Trade Agreement and our reasons for supporting its implementation will be of assistance to this Committee.

Appendix I

1986 U.S. AND CANADIAN STEEL MARKETS
(Net Tons)

PRODUCTS	DOMESTIC SHIPMENTS[1]		TOTAL IMPORTS[2]		TOTAL EXPORTS[3]	
	U.S.	CANADA	U.S.	CANADA	U.S.	CANADA
Structural Shapes (heavy, medium, & bar sized)	4,698,286	681,740	1,872,660[4]	61,606[5]	19,259[6] (31,697)	289,210
Reinforcing Bars	4,268,223	497,165	453,034[7]	7,872[8]	14,197[9] (14,197)	18,869
Other Hot-Rolled Bars[13]	4,275,364	555,472	406,295[10]	51,182[11]	19,561[12] (52,248)	127,467
Wire-Rod	3,380,095	706,119	1,202,863[14]	251,965[15]	2,637[16] (5,876)	327,404

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[1] U.S. numbers are from the American Iron and Steel Institute (AISI), 1986 Annual Statistical Report. Canadian numbers are from Statistics Canada, Primary Iron and Steel, Table 2, Dec. 1986. Numbers do not include alloy products.

[2] U.S. numbers are compiled from the Department of Commerce, Canadian numbers are compiled from the Canadian International Trade Classification (C.I.T.C.) Detail, 1986. Both sets of numbers only include carbon, hot-rolled products.

[3] U.S. numbers are compiled from the Department of Commerce. Numbers in parenthesis are from AISI, 1986 Annual Statistical Report. The Canadian numbers are from Statistics Canada, *supra*, note 1. Canadian numbers and AISI numbers may include products other than hot-rolled carbon products.

[4] TSUS #609.8010 - 609.8090.

[5] Canadian #44611, 44613, 44615, 44616, 44618, 44620, and 44630.

[6] Schedule B #609.8110, 609.8120, and 609.8510.

[7] TSUS #606.7900.

[8] Canadian # 44405.

9. Schedule B #608.3800.

10. TSUS #606.8310, 606.8330, and 606.8350.

11. Canadian # 44406, 44407, and 44409.

12. Schedule B #608.4310.

13. Includes bar shapes under 3 inches.

14. TSUS #607.1400, 607.1710, 607.1720, and 607.1730.

15. Canadian # 44450-29.

16. Schedule B # 608.7400.

1986 U.S.-CANADIAN STEEL TRADE
(Net Tons)

	Structural Shapes	Reinforcing Bars	Other Hot-Rolled Bars[1]	Wire Rod
Imports into U.S. from Canada[2]	330,477 (275,006)	27,126 (27,198)	136,832 (299,791)	353,274 (376,954)
Imports into Canada from U.S.[3]	20,299 (11,811)	2,625 (574)	21,153 (12,169)	2,274 (323)

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[1] Also includes bar shapes under three inches.

[2] Compiled from the Department of Commerce, using TSUS #609.8010 - 609.8090 for structural shapes, TSUS #606.7900 for rebar, TSUS #606.8310-606.8350 for other hot-rolled bars, and TSUS #607.1400 and #607.1710-607.1730 for wire rod. Numbers in parenthesis are numbers from AISI for total product category.

[3] Compiled from the Canadian International Trade Classification (C.I.T.C.) Detail, 1986, using Canadian #44611, 44613, 44615, 44616, 44618, 44620 and 44630 for structural shapes, #44405 for rebar, #44106, 44407, and 44409 for other hot-rolled bars, and #44450-29 for wire-rod. Numbers in parenthesis are U.S. export numbers compiled from the Department of Commerce, using Schedule B #609.8110, 609.8120, and 609.8510 for structurals, #608.3800 for rebar, #608.4310 for hot formed bars, and #608.7400 for wire rod.

Chairman Gibbons. Thank you, sir. You may be assured your statement and any other statements will be included entirely. I am talking about your statement for your principal.

I am glad to hear that you believe and feel your industry is fully ready to compete worldwide and on a level playing field. You have my hardiest endorsement. I will do everything that I can to get you a level playing field.

I just want to repeat again that by not forcing the Canadians to rid themselves of some of their subsidy practices does not license those subsidy practices. I think they understand that, we certainly understand that.

Have you had any experience, you or your industry had any experience recently in enforcing any of our antidumping or countervailing duty laws? Have you tried to enforce any of them?

Mr. Muth. The answer to your question, sir, is no. We have given very serious consideration to a countervailing duty action in regard to the subsidies. It is difficult at the moment for us, and let me try to explain why.

Chairman Gibbons. All right, sir.

Mr. Muth. First of all, the major subsidies that we are addressing—and, by the way, they add up to, give or take a few million, 500 million Canadian dollars—are being poured now into the rebuilding of the Canadian smelting industry. On top of that, there are individual subsidies to particular marginal mines. That money has just now been committed, some of it not yet committed. It will be some years before those plants are built and on line. So at this time we are caught betwixt and between, we have the agreement coming into effect, but the demonstration of impact from some of the major subsidies would be perhaps difficult at this time.

Also, Mr. Chairman, there are consequences of these subsidies that aren't reached by CVD. First of all, there is the matter of competing for raw materials. Much of the competition in our industry has to do with competing to acquire the raw materials to run the smelters and refineries. A subsidized smelter can afford to preempt the market for raw materials, particularly when prices are low and many mines are forced to close. In such times the competition for the remaining raw materials becomes intense.

Under those circumstances, a Government-supported plant has an advantage which is not reached by countervailing duty laws, because it doesn't turn on imports of metal, it turns on the acquisition of raw material.

There is another problem here with——

Chairman Gibbons. I think that point has been decided in the Cabot case, as I recall. You are talking about general availability, and the Cabot case seems to me to say in order to escape the penalty of a subsidy, it must be, in fact, generally available to all who seek the product, not just a paper transaction.

But I am glad you bring that up, because this has been a concern of mine for some time, about the treatment of products in the stream, so just go right ahead.

Mr. Muth. I can illustrate the point here with the specific Canadian subsidies that are of concern to us. At the present time $134 million Canadian Federal and Provincial funds have been made available for the complete modernization and rebuilding of the large lead smelter at Trail, British Columbia. That lead smelter will process mine production from Alaska. Now, that Alaskan mine production could have come to a U.S. smelter.

We have one sitting down in El Paso, Tex., which is shut down because it can't find the raw material to run. But, the Alaskans' production will go to a smelter in Trail, British Columbia. That $134 million translates into 5 cents a pound of lead, and we are talking about a commodity that sells in the range of 18 cents a pound to 40 cents a pound. Five cents a pound at the bottom of the cycle will break our backs.

Similarly, $84 million Canadian is going into the rebuilding of a copper smelter in Quebec. That smelter is looking to process material out of Latin America. They are going to bring mine production from Latin America into Canada, smelt and refine it in a Government-supported plant and export the metal duty free to the United States. Because under this agreement those concentrates converted into metal in that plant will come in duty free. Those raw materials could as well be processed in the United States.

Now, this is the kind of thing that, it is a competition for the raw materials—that the CVD laws do not effectively deal with.

Another problem, sir: When times are tough in our industry, they are tough because demand is slack and production is in excess. In those times it is a question of who gives up, who shuts down. The subsidized plants will operate. After all, part of the quid pro quo here for subsidies is to keep people employed. Those plants will operate hell or high water. And whether those particular plants export to the United States is not terribly relevant. They will add to the total world stocks of material which tend to depress prices on a worldwide basis.

So, once again, our industry in the United States can be badly hurt, and yet the CVD law does not necessarily provide a handle to deal with the problem.

Chairman GIBBONS. Let me ask you about that Canadian smelter in British Columbia. Where is it located in British Columbia?

Mr. MUTH. Trail.

Chairman GIBBONS. Where is Trail? On the water somewhere?

Mr. MUTH. It is not far from the border, that is right.

[Additional information follows:]

ASARCO

Robert J. Muth
Vice President
Government and Public Affairs

March 9, 1988

Mr. Robert J. Leonard
Chief Counsel
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Leonard:

Enclosed is a corrected version of the transcript of my testimony before the Trade Subcommittee on February 29.

At one point in the transcript there is a problem that I want to point out to you because it reflects a misunderstanding. At the top of page 61, Chairman Gibbons asked where is Trail? On the water somewhere? At the time, however, I understood Mr. Gibbons to be saying "border" and in my response I in fact said, "It is not far from the border, that is right."

I don't know just how to straighten this out. The fact is that the Trail smelter is not on the water. Indeed, one of the arguments that we understand was advanced in support of the Canadian government subsidies at Trail was that because Trail was not on water it might be closed in favor of a smelter located near a deep water port.

Reading over now the sense of Mr. Gibbons remarks, it is entirely likely that he did refer to "water" and my suggestion on the enclosed transcript that the words be changed to "border" aren't entirely satisfactory. On the other hand, we can't allow the transcipt to reflect that Trail is in fact near the water because that simply isn't true. Having stated the problem I leave the solution to you. Since the whole conversation turned on a misunderstanding perhaps it should simply be strickened.

Sincerely,

R.J. Muth

RJM:pd
Enc.

Chairman GIBBONS. Well, I can see why Alaska lead would go into their refinery rather than having to take it all the way down through the Panama Canal and bring it back up through Houston or some place and truck it or rail it thousands of miles out to El Paso. Lord, you would have to have lost your mind before you would do that. The freight would eat you up with all that other.

Mr. MUTH. We have a plant in Helena, MT, that smelts lead concentrates from Australia. Transportation is not a big problem here.

Chairman GIBBONS. It is not?

Mr. MUTH. Not ocean transport. Ocean transportation is the least of our problems. As far——

Chairman GIBBONS. The last time I was there, it was a long way from the ocean.

Go right ahead.

Mr. MUTH. As far as inland transportation goes, well, another example, our plant in Helena, Mont., competes directly with the Trail smelter. For many years that plant has relied for a base feed on lead mines, lead silver mines in Idaho. Recently we lost half of a major tonnage to the Trail smelter. A nickel a pound of government money is more than we can chew.

Chairman GIBBONS. I don't ask any American producer to compete against a subsidy. I have a little trouble with some of my colleagues on that. I don't expect you to compete against a subsidy. We ought to get rid of them. I am 100 percent on your side when it comes to that.

All right. Mr. Frenzel.

Mr. FRENZEL. I have no questions.

Chairman GIBBONS. Mr. Pease.

Mr. PEASE. Thank you very much, Mr. Chairman.

Mr. Muth, you seem to have chapter and verse all laid out on the provincial and National Canadian Government subsidies of those plants you mentioned a few minutes ago. If you have the proof like that, what is it about our laws that prevents a successful countervailing duty suit?

Mr. MUTH. I am sorry, sir, I intended to address that in my previous remarks. Let me try in a little different way.

First of all, the $500 million-plus is presently going into these plants, is just now being committed, these plants are under construction. One $20 million arrangement for reopening a marginal copper mine in Quebec has now been put on hold until July for whatever reason. But these things are happening right now, and the effects are prospective, and it is very awkward to be caught right now in having to bring a CVD case.

I have also, I thought, tried to explain, in response to the chairman's questions, that many of the impacts of these subsidies are felt in ways the CVD law does not reach. That is why we had such great hopes for this agreement, because in the agreement there was an opportunity to reach a long-term resolution of these problems, and that opportunity has been allowed to slip.

I might say in this respect, Mr. Chairman, the Governor of Illinois properly told you that the National Governors' Association had passed a resolution supporting the agreement. That is true. But you should be aware that there was an amendment to that resolution sponsored largely by Governors from the West, that is to say the natural resource producing States, which called upon the administration to go back and negotiate further on the subsidy issue. I think it should be very clear here that while there is general support for this agreement, which we acknowledge to be widespread, nevertheless there are a lot of people in this country concerned about the subsidy practices.

Mr. PEASE. I would like to continue with one question for Mr. Fink. Why can't the U.S. zinc alloy firms compete successfully with Canadian firms? You answered the question during your testimony, saying that they can produce zinc 80 percent cheaper than we can, is that right?

Mr. FINK. Yes. Producing zinc, they have the base product to start with, and all they have to do is add the alloy at that point.

Mr. PEASE. Is it possible for American zinc alloy firms to purchase that raw zinc from the Canadians for that same low price?

Mr. FINK. The zinc ore, sir?

Mr. PEASE. Pardon me?

Mr. FINK. Well, they started with their base, which is the ore, and they reduce it into a pure product which they sell. If they add or alloy it, then they have to pay this ad valorem tax. Whether the U.S. producers could do the same, apparently the U.S. producers are having problems just making a profit from making the raw base pure zinc, because since I have been in the business, it must have been five or six have gone out of business.

I think—your zinc production has been what——

Mr. MUTH. ASARCO historically did produce slab zinc. We now mine zinc in this country, but no longer operate a refinery.

Mr. PEASE. From the viewpoint of an alloy factory, why wouldn't it be in your interest to go up into Canada and buy that cheap raw zinc?

Mr. FINK. The price they would charge us—let's put it this way. They have the raw material, and they make a profit on that, and then by adding the alloy they add a profit, an additional profit. They, in adding it at that point, can do it 80 percent cheaper than we can, because it is already in a form they don't have to do anything. We have to bring it into this country, I have to reduce it again and make the alloy.

Mr. PEASE. I guess what I just don't understand is why——

Mr. FINK. I don't know if this is similar. Say that there was a tariff on fur coats, I would buy the furs and make a coat. If they made the coat, there would be a tariff. Now, they can make the coat with no tariff so they make a profit on the fur, then they make a second profit on making the coat. There is no way that I can buy the raw material from them and then compete with them. They have the base product to start with.

Even if they broke even on that, they could put me out of business. They already have a profit in the reduction of the zinc ore into zinc.

Mr. PEASE. Mr. Fink, I think we are talking past each other, and in that you are going to be successful. My only thought is that if the Canadians can produce the zinc which becomes alloyed at the lower price, and you could buy that same zinc from the Canadians, you ought to be as efficient as the zinc alloy factory, wouldn't you be?

Mr. COOPERMAN. It is similar to an aluminum smelting plant with which you are familiar in Cleveland and Painesville. The Canadian plants are about 100 times larger than the alloying plants. They are in the process of making producers ink all day long. In order to make alloy all they have to do is tap off one of those furnaces, add alloying materials, ship it into the United States. It costs them about a penny or a penny-and-a-half to make that alloy, and that is a Canadian penny or penny-and-a-half.

For a zinc alloyer to produce the same alloy, you got to put up a building, you got to buy his furnaces, pay all his operating costs, his labor costs, then he has got to buy the material from the Canadians, bring it down to this plant where he has a lot of capital invested, pay his own labor, and it is going to cost him between 6 and 8 cents a pound to make the same pound of alloy that the Canadian producer is able to do for a penny or a penny-and-a-half.

Mr. PEASE. Thank you very much. That helps me a lot. I appreciate that.

Chairman GIBBONS. Mr. Crane.

Mr. CRANE. Thank you, Mr. Chairman. I don't have any questions.

My interest was in the explanation of that part of Mr. Fink's testimony, too. I think Mr. Pease has covered it, and Mr. Fink has responded, so I yield my time, Mr. Chairman.

Chairman GIBBONS. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

I have one question. The Canadian negotiator, Mr. Simon Reeseman, has been quoted in the press as saying the United States negotiated like a third-world country in the bargaining for the agreement and that Canada took the United States 3-to-1 on issues finally agreed to. Have you heard that statement, that he made such a statement?

Mr. MUTH. Yes, sir, I believe that statement was widely reported in the press shortly after the agreement was signed. I think we haven't heard from Mr. Reeseman since. Ever since then we hear it has been a win-win situation.

Mr. DUNCAN. You think it might be 4 to 1 after you looked into it?

Mr. MUTH. If you look narrowly at what happened to the natural resource sector, I think 3 to 1 would be a generous statement.

Mr. DUNCAN. Thank you. Thank you, Mr. Chairman.

Chairman GIBBONS. All right, thank you gentlemen. We appreciate very much your testimony.

Our next panel is John M. Fluke, Jr., chairman, John Fluke Manufacturing Co., Inc., Everett, Wash., on behalf of the American Electronics Association; Benjamin Y. Coopers, senior vice president for government affairs, Printing Industries of America, on behalf of the Printing Industries of America, Inc., and National Association of Printers and Lithographers; and Michael H. Stein, counsel, American Plywood Association.

Mr. Fluke.

STATEMENT OF JOHN M. FLUKE, JR., CHAIRMAN, JOHN FLUKE MANUFACTURING CO., INC., ON BEHALF OF THE AMERICAN ELECTRONICS ASSOCIATION

Mr. **Fluke**. Mr. Chairman, Members of Congress. My name is John Fluke, Jr. I am chairman of the board of the John Fluke Manufacturing Co. of Everett, Wash.

My company is engaged in the design, manufacture, and marketing of an extensive line of test instruments and systems. Our products are a very basic kind of capital equipment, sold to electronics manufacturers all over the world.

With respect to Canada specifically, we have sold our products in Canada for over three decades. Recently we purchased our independent Canadian sales, technical support and services entity to further advance our presence in Canada.

Today I am here representing the American Electronics Association, which consists of over 3,700 electronics manufacturers across America.

I might add, AEA represents an industry sector that employs over 2.5 million. The AEA is the largest trade association representing the electronics industry. I am a member of its national board of directors.

Mr. Chairman, it is difficult to overstate the importance of United States-Canada trade to the health of the electronics industry. Trade in electronics products between our two nations was $7.5 billion in 1986, and $4.1 billion for the first half of 1987.

Not only do our member companies export more to Canada than any other country, but many AEA member companies have plants and R&D centers on both sides of the border. Because half the available market for many electronics products is outside the United States, restrictions on the free flow of products, technology and people to and from any country hits our companies at the bottom line. And for many of our members, Canada is at the top of the list of important export markets.

For this reason, AEA has strongly supported the negotiations leading to this free trade accord under consideration here today. Although the accord understandably excludes some areas from consideration, AEA support congressional ratification of the accord for two reasons:

One, because it will be of both immediate and long-term benefit to U.S.-based electronics companies doing business with Canada.

Two, because liberalization between two of the world's largest trading partners sets a critically important example of multilateral negotiations going on in the GATT.

Allow me to give you some examples of these benefits.

Tariffs, the electronics industry has previously highlighted the direct benefits of mutual tariff elimination in the area of computer parts. The agreement does away with all tariffs over a 10-year period.

Services, included in the agreement are both general principles regarding free trade in services as well as an annex on enhanced telecommunications and computer services.

Investment, the agreement represents further liberalization of Canadian investment policies, particularly in that it does away with the review of all "green field" investments.

Standards, the agreement provides recognition of accreditation systems for testing facilities, and acceptance of test data. This agreement will eliminate costly duplication for companies in this area.

Intellectual property, although there was no commitment in the agreement by the Canadian Government to grant copyright protection for software, recent efforts by the Canadian Parliament have moved us closer to that goal.

We also understand that there is a movement underway to provide protection for semiconductor maskworks commensurate with that which is provided to manufacturers here in the United States.

As I mentioned earlier, the natural give and take involved in the negotiating process leaves the agreement with some areas that definitely need future attention. I have spelled this out in greater detail in my written testimony. Specifically these areas include:

Canada's rationalization practices under which U.S. companies can be forced to transfer technology and R&D centers to Canada as a requirement for participating in Canadian Government contracts; and discriminatory procurement arrangements which block U.S. company participation in significant portions of Canada's telecommunications equipment market.

Because these areas will remain unresolved after the adoption of the FTA, and because trade barriers in the electronics industry can evolve as rapidly as new technology, AEA supports the establishment of on-going mechanisms for addressing impediments to trade in electronics on an expedited basis. AEA does not advocate, however, that the Congress try to add this mechanism to the actual agreement at this time.

It is worth noting in this context that as an association, AEA has already taken the first steps toward an on-going dialogue at the industry level. On February 3, representatives from AEA companies met with senior executives from the Canadian Advanced Technology Association to discuss trade and the FTA.

The result of this meeting was a joint AEA/CATA statement endorsing the free trade agreement. In the spirit of developing a North American electronics agenda, moreover, the two groups also outlined a number of issues areas which would need to be addressed in order to keep moving toward an environment of truly free trade.

With your permission, Mr. Chairman, I would like to have the joint communique from that meeting entered into the record at the conclusion of my remarks for the committee's consideration.

Chairman GIBBONS. Without objection.

Mr. FLUKE. In summary, AEA is encouraged by the broad nature of this agreement with Canada and supports its passage as an important step in promoting the growth of the electronics industries in North America.

AEA also supports further efforts to insure progress in those areas outlined above. AEA staff and volunteers stand ready to work with government officials in the future to insure that the momentum generated by this historic agreement can be continued.

Last, as I suggested earlier, Canada is among the top six country markets to which my company exports. The heath of the Canadian electronics industry over the long-term is very important to my company's future.

While the reduction or elimination of the tariff and nontariff barriers can create short term challenge for companies on both sides of the boundary, the intramural competition within the North American market will not only benefit our customers, it will also hasten the speed with which United States and Canadian electronics companies rise to the Asian challenge and meet it head on.

It is time for American industry to stop whining to Congress and to get back out in the field and play to win. But we need good government and the framework it can provide for two-way trade.

Thank you for the opportunity to testify on this important subject.

[The statement of Mr. Fluke follows:]

Statement of John M. Fluke, Jr.
Chairman, John Fluke Manufacturing Company
on behalf of the
American Electronics Association
February 29, 1988

Mr. Chairman and Members of the Committee, my name John M. Fluke, Jr., and I am Chairman of the Board of John Fluke Manufacturing Company, Inc. of Everett, Washington. Our Company is engaged in the design, development and marketing of an extensive line of electronic test instruments and systems. We are a mature company and market our products worldwide. We recently established a Canadian sales and marketing subsidiary in connection with a worldwide marketing alliance with N.V. Philips Company.

Today I am here representing the American Electronics Association (AEA), which consists of over 3,500 electronics manufacturers across America. AEA is the largest trade association representing the electronics industry. I sit on the association's Board of Directors.

AEA's member companies span the spectrum of size and product type. Members range from the newest start-up companies to America's largest corporations. The companies manufacture products including computers and peripherals, computer software, semiconductors and other components, telecommunications equipment, scientific and medical instruments, aerospace and military equipment, and manufacturing machinery for these and other products

Mr. Chairman, it is difficult to overestimate the importance of U.S.-Canada trade to the health of the electronics industries. Trade in electronics products between our two nations was $7.5 billion in 1986, and $4.1 billion for the first half of 1987. Not only do our companies export more to Canada than any other country, but many AEA member companies have plants and R&D centers on both sides of the border. As is the case generally for our industries, restrictions on the free flow of products, technology and people to and from Canada hit our companies at the bottom line.

For this reason, AEA has strongly supported the negotiations which have led to this Free Trade Accord which is under consideration here today. AEA is pleased that the U.S. and Canadian governments have concluded an agreement on free trade. The goal of the Free Trade Accord -- the complete elimination of trade barriers between our countries -- could be a model for other bilateral negotiations as well as the GATT multilateral negotiations currently being conducted in Geneva.

Although the Accord does not completely reach this important goal, AEA believes it sets in motion an important process toward free trade which must be built upon. Accordingly, AEA supports Congressional ratification and offers the following assessments of the agreement in areas of particular interest to the industry:

TARIFFS

The electronics industry has previously highlighted the direct benefits of mutual tariff elimination in the area of computer parts. During the negotiations, AEA advocated the immediate elimination of duties on all electronics products in the FTA. Although we were disappointed that this goal was not achieved, several important duty categories will, in fact, be eliminated immediately, while others will be phased out more gradually.

AEA is pleased with immediate duty eliminations and supports the acceleration of the duty elimination on electronics products in the three, five and ten year categories.

SERVICES

Although we are disappointed that the FTA did not address existing barriers to trade in services, the general principles and the enhanced telecommunications and computer services sectoral annex represent an important model for the GATT negotiations.

CUSTOMS

AEA supports the concept underlying the rule of origin in the FTA, namely determination of origin on the basis of a change in tariff heading. This concept should also be sought in the GATT negotiations as a standard world-wide. We are concerned however, about the particular application of value added requirements which threaten to impose a highly expensive administrative burden on the electronics industry. In cases where a change of tariff heading does not occur, AEA would prefer that the historically proven substantial transformation test be applied.

STANDARDS

AEA notes with satisfaction the agreement to provide recognition of accreditation systems for testing facilities, and acceptance of test data. This agreement will eliminate costly duplication for companies in this area. We also note the favorable decision of the Canadian Department of Communications to continue writing network access standards. We consider this important for the sake of maintaining a transparent process open to industry participation and public comment.

INVESTMENT

While the agreement does represent further liberalization of Canadian investment policies, we do not accept the principle of review of foreign investments. The retention of a low threshold of C$150 million above which Investment Canada can review and block direct acquisitions in Canada leaves U.S. companies vulnerable to hostile takeovers by Canadian firms without recourse to commonly used business countermeasures.

In addition, we are disappointed with the limited list of performance requirements which have been eliminated, particularly excluding Canadian technology transfer requirements.

INTELLECTUAL PROPERTY

AEA notes the absence from the agreement of any commitment by the Canadian government to grant copyright protection for software. We are encouraged, however, with recent efforts by the Canadian Parliament to provide copyright protection for software. We also understand that there is a movement underway to protect semiconductor chip maskworks commensurate with that which is offered to manufacturers here in the U.S. This effort, if completed, will help to insure adequate levels of protection in Canada and around the world.

TRANSFER OF TECHNOLOGY

Canada's "rationalization" program is aimed at transferring R&D, technology and whole lines of production to Canada. It requires that, in order for U.S. companies even to qualify for access to Canada's federal, provincial and Crown corporation procurement market, they must enter into commitments with respect to these areas of business activity. While the FTA does away with future requirements for manufacturing, transfer of technology requirements are not addressed. These requirements as a condition for sale to governments go beyond reasonable practice and are inconsistent with the movement toward freer trade. AEA advocates that the U.S. seek elimination of this program.

REGULATION OF TELECOMMUNICATIONS PROCUREMENT

The Canadian Radio and Television Commission (CRTC) with jurisdiction over telephone service providers has promulgated inconsistent rulings regarding the service providers' obligation to implement open, competitive procurement. Specifically, the CRTC requires British Columbia Telephone to procure on the basis of competitive bidding, while permitting the closed procurement process of Bell Canada, the largest service provider in Canada.

It is important to have consistent regulations in favor of open procurement so that American companies will not be disadvantaged in competing with Canadian manufacturers. AEA urges that the U.S. government continue to encourage the Canadian government to require the CRTC to establish a consistent policy of open, competitive procurement for all telecommunications service suppliers under its jurisdiction.

ON-GOING WORK

Because a number of priority areas for the electronics industry will remain unresolved after the adoption of the FTA, and because trade barriers in the electronics industry can evolve as rapidly as new technology, AEA supports the establishment of on-going mechanisms for addressing impediments to trade in electronics on an expedited basis. AEA does not advocate, however, that the Congress try to add this mechanism to the actual agreement at this time.

It is worth noting in this context that as an association, AEA has already taken the first steps toward on-going dialogue at the industry level. On February 3rd, representatives from AEA companies met with senior executives from the Canadian Advanced Technology Association to discuss factors affecting trade in electronics. The result of this meeting was a joint AEA/CATA statement endorsing the Free Trade Agreement. In the spirit of developing a "North American" electronics agenda, moreover, the two groups also outlined a number of issue areas which would need to be addressed in order to keep moving toward an environment of truly free trade.

With your permission, Mr. Chairman, I would like to have the joint communique from that meeting entered into the record for the committees consideration.

CONCLUSION

In summary, AEA is encouraged by the broad nature of this agreement with Canada and supports its passage as an important step in promoting the growth of the electronics industries in North America. AEA also supports further efforts to insure progress in those areas outlined above. AEA stands ready to work with government officials in the future to insure that the momentum generated by this historic agreement can be continued.

Thank you for the opportunity to testify on this important subject.

# # #

AEA/CATA JOINT COMMUNIQUE

Business executives representing a broad base of Canadian and U.S. electronics and advanced technology interests met yesterday in Washington to examine the free trade agreement recently signed between the two countries.

Speaking on behalf of the U.S. delegation, Dick Iverson, AEA President, expressed strong support for passage of the agreement. He emphasized, "it is critical for decision-makers to understand that international competitiveness cannot be built around tariffs and other forms of protectionism." Gordon Gow, CATA Chairman, echoed this assessment. "Markets for advanced technology goods and services are international as is the sourcing of technology and funding for new investment. A more international outlook is critical to Canada and U.S. business success," observed Gow.

While the meeting resulted in a strong endorsement of the free trade agreement, several open items were identified for continued work in the direction of free trade in electronics and information technologies. In the spirit of the FTA representatives from AEA and CATA will work together to:

-- ensure that the list of personnel eligible for temporary business entry into the U.S. and Canada is broadly defined;

-- provide for a North American membership in institutional arrangements;

-- determine how to best remove constraints to technology transfer;

-- ensure the harmonization and consistent application of standards;

-- accelerate the schedule for tariff elimination on electronics products;

-- strengthen protection for intellectual property globally;

-- create "hassle free" border clearances and administrative procedures, including the development of efficient and timely methods to determine 50% U.S.-Canadian content required for tariff free treatment;

-- establish an AEA/CATA mechanism for on-going work toward the resolution of common issues and mutual concerns.

Also noted was the need to lay the groundwork for scaling up the North American R&D effort and enhancing Canada/U.S. business relations. To this end, several areas were suggested as critical to this effect. Desirable initiatives would include:

-- increased strategic partnering between Canada and U.S. firms and organizations

-- changes in the way in which we educate and train our citizens

-- efforts to build high tech industry

-- the more rapid diffusion of productivity-enhancing technology throughout our economies

-- increasing public awareness of the strategic contribution science and technology make to their well-being

Messrs. Iverson and Gow agreed that "Canadian and U.S. industry must continue to examine ways to better work together and to develop and use knowledge to create more wealth and jobs for North Americans."

CATA is the national industry association representing the interests of Canada's advanced technology community. Its members include advanced technology companies having production or R&D capability located in Canada, as well as research, financial and academic institutions and companies or individuals concerned with the performance of the sector.

AEA is the nation's largest electronics trade association with nearly 4,000 high tech member firms regularly participating in national, international, state, and grass-roots public affairs activities. More than 70 percent of AEA's member companies are small businesses with less than 300 employees. They account for 75 percent of the world-wide sales of the U.S.-based electronics industry.

Chairman GIBBONS. Thank you.

Now we will go to the printing industries.

STATEMENT OF BENJAMIN Y. COOPER, SENIOR VICE PRESIDENT FOR GOVERNMENT AFFAIRS, PRINTING INDUSTRIES OF AMERICA, INC., ALSO ON BEHALF OF NATIONAL ASSOCIATION OF PRINTERS & LITHOGRAPHERS

Mr. COOPER. Mr. Chairman, and members of the Subcommittee on Trade, my name is Ben Cooper. I am the senior vice president for governmental affairs for the Printing Industries of America.

My comments today also reflect the views of the National Association of Printers and Lithographers. Our two associations represent approximately 15,000 U.S. printers and produce virtually every print produced in the United States other than newspapers.

I appreciate the opportunity to appear before you today in support of the free trade agreement with Canada.

Trade with Canada is vitally important to the U.S. printing industry. In 1987, the U.S. printing industry exported almost $750 million in products to Canada.

An overall favorable trade balance has been maintained with Canada throughout the years despite unduly restrictive tariff and nontariff barriers on many printed products entering Canada.

Printed products have a distinction of sorts in Canada that we have grown to find uncomfortable. That distinction is that tariffs on printed products in Canada are the highest of all tariffs on products in Canada, with the leading restriction being a 28.6 percent tariff on catalogs. That is followed by a 24.3 percent tariff on advertising material.

While we face these high tariffs in Canada, the United States maintains virtually no tariffs or extremely low tariffs on printed products. Our corresponding catalog tariff is zero; our advertising tariff is 4.9 percent.

In the area of books, periodicals, and newspapers, the United States maintains zero tariffs, and those tariffs are bound at zero. No one in Canada would suggest U.S. tariffs pose an obstacle to Canadian trade with the United States.

Quite obviously, in the area of tariffs, the free trade agreement negotiated with Canada provides an enormous opportunity for the U.S. printing industry. While no one can predict the eventual gains from removal of tariff barriers, it is our estimation that an additional $500 million of business could be realized by U.S. printers through the removal of these Canadian tariffs.

Under the agreement negotiated between the United States and Canada, tariffs on printed products would be removed within a 5-year period. While we would be happier with a faster elimination of tariffs, we feel this was a significant achievement which will be helpful to the U.S. printing industry, and one in which we hope you will support by passing the legislation implementing this agreement.

While we are pleased with the success of the negotiations in eliminating Canadian tariffs, there are some areas of nontariff barriers which were not resolved, which we feel should be accorded continued attention.

These items were part of a draft 301 petition developed by the Printing Industries of America, but never filed, in advance of the free trade negotiations.

Canada maintains discriminatory postal rates which heavily discriminate against the printing of newspapers and magazines in the United States. Products that are printed in Canada pay a significantly lower rate than products printed outside Canada even though both products would be mailed inside Canada.

The United States offers no corresponding discriminatory rate.

Another area of unresolved difference with Canada is the prohibition on the importation of periodicals which have advertising directed at a Canadian audience. Canada prohibits importation of issues of a periodical which has more than 5 percent of the advertising space used for "advertisements that indicate specific sources of availability in Canada or specific terms or conditions relating to the sale or provision in Canada of goods or services."

In other words, if a U.S. publication accepts advertising by Canadian companies directed at a Canadian audience, the magazine may be prohibited entry into Canada if the advertising exceeds 5 percent of the total publication advertising space.

Despite our dissatisfaction with the lack of success in negotiating relief on the two aforementioned items, the Printing Industries of America nevertheless strongly supports the free trade agreement.

We feel that failure to pass the agreement will mean that we will continue to face extremely high tariffs, perhaps for the next decade or more. It is also our understanding that, among the provisions of the agreement between the United States and Canada, we will continue to be able to discuss disputes that exist between the two countries and to avail ourselves in our normal trade complaint procedures, such as 301 petitions and other mechanisms currently at our disposal.

In this regard we hope to continue to address some of the cultural issues which limit trade in printing.

Printers who cannot sell in Canada are perplexed by cultural arguments. While we understand the needs of any group to express their identity, we fail to see how these needs are linked to the manufacturing process.

As we stated in response to questions during interdepartmental hearings on the free trade agreement in 1986, cultural sovereignty means that you support your writers, artists, and other unique expressions of culture.

Converting that cultural sensitivity into a need to charge five or six times greater postal rate because a magazine is printed in the United States is hardly justifiable.

In conclusion, we reiterate our strong support for the proposed agreement. We believe $500 million in additional business is worth our endorsement and we hope yours as well. However, as we support the agreement and urge its approval, we do not intend to relax the pressure to remove the remaining prohibitions to free trade in printed products.

Thank you.

[The statement of Mr. Cooper follows:]

STATEMENT OF THE PRINTING INDUSTRIES OF AMERICA

Mr. Chairman and members of the Subcommittee on Trade, my name is Ben Cooper. I am the Senior Vice President for Government Affairs for the Printing Industries of America. My comments today also reflect the views of the National Association of Printers and Lithographers. Our two associations represent approximately 15,000 U.S. printers. I appreciate the opportunity to appear before you today in support of the Free Trade Agreement with Canada. While we believe the Agreement will have tremendous beneficial effects throughout the U.S. and Canadian economy, we will limit our remarks today to the effect this Agreement will have on the U.S. printing industry.

The interest of the U.S. printing industry in free-trade with Canada is by no means a new area of concern. Elements of our industry have been seeking a reduction of barriers with Canada for at least 20 years. For a significant portion of that time, much of the effort of the U.S. printing industry has been aimed at attempting to convince Canada that there was some social value in maintaining no tariffs on books, magazines, and periodicals. Through the 1970's, the U.S. printing industry attempted to convince Canada to join virtually every other country in the world as a signatory to the Florence Agreement, a UNESCO sponsored treaty under which the countries who participate agree to place no tariffs on scientific, educational, or cultural materials. As a result of negotiations to exempt Canada from a provision of U.S. copyright law known as the Manufacturing Clause, Canadian printing and publishing representatives agreed to urge their government to sign the Florence Agreement. The Canadian government did not do so. Instead they agreed to "zero rate" duties on books, magazines, and periodicals. However, even in this area, the agreement was "unbound" so that Canada could choose to take retaliatory actions and place tariffs on these products, as was done in 1986 in response to the "cedar shakes and shingles case".

Trade with Canada is vitally important to the U.S. printing industry. In 1987, the U.S. printing industry exported almost $750 million in products to Canada. These products include not only books, magazines, and newspapers, but general advertising material, catalogs, labels, business forms, specialty advertising, calendars, maps, and virtually any other printed product you could imagine. As is shown on the accompanying tabular data, the bulk of U.S. exports to Canada has been in books, periodicals, and newspapers, with books the single leading export item. The U.S. printing industry has maintained a positive balance of trade with Canada in these product areas. An overall favorable trade balance has been maintained with Canada throughout the years despite unduly restrictive tariff and nontariff barriers on many printed products entering Canada.

Printed products have a distinction of sorts in Canada that we have grown to find uncomfortable. That distinction is that tariffs on printed products in Canada are the highest of all tariffs on products in Canada, with the leading restriction being a 28.6 percent tariff on catalogs. That is followed by a 24.3 percent tariff on advertising material. Other Canadian tariffs are in the accompanying material. As can also be shown, despite the fact that advertising printing represents the bulk of the U.S. printing industry, our exports in those items are extremely limited. Likewise, catalog printing, which has been among the fastest growing of all U.S. printed product segments, has been very limited by the excessively high Canadian tariff. In fact, in these product areas, the United States, despite an eleven to one advantage over Canada in size, has a negative balance of trade.

While we face these high tariffs in Canada, the United States maintains virtually no tariffs or extremely low tariffs on printed products. Our corresponding catalog tariff is zero; our advertising tariff is 4.9 percent. In the areas of books, periodicals, and newspapers, the United States maintains zero tariffs, and those tariffs are bound at zero. No one in Canada would suggest U.S. tariffs pose an obstacle to Canadian trade with the United States.

Quite obviously, in the area of tariffs, the Free Trade Agreement negotiated with Canada provides an enourmous opportunity for the U.S. printing industry. While no one can predict the eventual gains from removal of tariff barriers, it is our estimation that an additional $500 million of business could be realized by U.S. printers through the removal of these Canadain tariffs. Under the agreement negotiated between the U.S. and Canada, tariffs on printed products would be removed within a five year period. While we would be happier with a faster elimination of tariffs, we feel this was a significant achievement which will be helpful to the U.S. printing industry, and one in which we hope you will support by passing the legislation implementing this agreement.

While we are pleased with the success of the negotiations in eliminating Canadian tariffs, there are some areas of non-tariff barriers which were not resolved, which we feel should be accorded continued attention. These items were part of a draft "301" Petition developed by the Printing Industries of America, but never filed, in advance of the free trade negotiations.

In the draft petition, Canada maintains discriminatory postal rates which heavily discriminate against the printing of newspapers and magazines in the United States. As can be seen by these rates, products that are printed in Canada pay a significantly lower rate than products printed outside Canada even though both products would be mailed inside Canada. We believe this discrimination is a violation of the General Agreement on Tariffs and Trade. We are disappointed that the postal rate issue was not part of the final agreement.

At one point in the negotiations, it was announced that Canada had agreed to eliminate discriminatory postal rates. However, in the fine print accompanying that agreement, Canada indicated that it was willing to eliminate discriminatory postal rates only for "substantial circulation" publications. When it came to the point of defining what "substantial circulation" meant, it was clear that only a few U.S. publications would be entitled to the non-discriminatory rate and that the discriminatory rate would be applied to all other U.S. printed publications. It was our feeling that the United States was better off with no agreement than an agreement that suggested a compromise had been reached when that compromise was unacceptable.

Another area of unresolved difference with Canada is the prohibition on the importation of periodicals which have advertising directed at a Canadian audience. Canada prohibits importation of issues of a periodical which has more than 5 percent of the advertising space used for "advertisements that indicate specific sources of availability in Canada or specific terms or conditions relating to the sale or provision in Canada of goods or services". In other words, if a U.S. publication accepts advertising by Canadian companies directed at a Canadian audience, that magazine may be prohibited entry into Canada if the advertising exceeds 5 percent of the total publication advertising space.

The combination of these two restrictions alone severly limits the ability of publications printed in the United States to flow into Canada.

Despite our dissatisfaction with the lack of success in negotiating relief on the two aforementioned items, the Printing Industries of America nevertheless strongly supports the Free Trade Agreement. We feel that failure to pass this agreement will mean that we will continue to face extremely high tariffs, perhaps for the next decade or more. It is also our understanding that, among the provisions of the agreement between the U.S. and Canada, we will continue to be able to discuss disputes that exist between the two countries and to avail ourselves in our normal trade complaint procedures, such as "301" Petitions and other mechanisms currently at our disposal.

Trade with Canada has been an interesting effort for the U.S. printing industry. Printing is the Nation's largest manufacturer, in terms of number of establishments, with approximately 45,000 companies. It is an enourmous industry: printing and publishing together account for approximately $120 billion in annual sales and employ almost one and one-half million people. Printing alone accounts for $60 billion in sales and 750,000 employees. With the exception of a very small handful of large printing companies, publishing companies, and newspapers, the bulk of the printing and publishing industry in the United States is very small printing firms. Approximately 42,000 of the 52,000 firms that comprise printing and publishing are printing companies with fewer than 20 employees. As a general rule, these companies are not anxious on a day-to-day basis about trade with Canada. Historically, they have not viewed Canada as a potential market simply because the U.S. market has been large enough to accomodate many of the competitive energies of the U.S. printer. What has attracted the attention of the U.S. printing industry in trade with Canada is the fact that numerous Canadian companies view the U.S. market with love and affection. Printers in Ohio, Illinois, Michigan, New York, Washington, and others along the U.S./Canadian border and beyond have seen customer after customer disappear, and conclude that their customers are disappearing to cities such as Toronto, Winsor, Montreal, Quebec, and Vancouver. As they look into the issue further, they find that while they have lost work to Canada, it is not possible for them to compete on the same level with our friends across the border.

The majority of these small printers do not print books, periodicals, and magazines; they provide general commerical printing and advertising material. When small printers attempt to compete across the border, they find extremely high tariff walls. In fact, they find walls that cannot be climbed. The printing industry in the United States is so competitive that a tariff of even 5 percent is often impossible to overcome. A tariff in double digits no longer becomes a tariff at all, but an outright barrier. A tariff in the range of 24 or 28 percent is well beyond any bound of reasonableness.

We frankly hope that the U.S. economy grows at such a rate in future years that it will be able to absorb the marketing interest of the vast majority of U.S. printers. At the same time, we feel it is imperative that those companies which express the right to export their products and their services ought to be able to do so in a free and open way.

Printers who cannot sell in Canada are perplexed by "cultural" arguments. While we understand the needs of any group to express their identity, we fail to see how these needs are linked to the manufacturing process. As we stated in response to questions during interdepartmental hearings on the Free Trade Agreement in 1986, cultural sovreignty means that you support your writers, artists, and other unique expressions of culture. Converting that cultural sensitivity into a need to charge five or six times greater postal rate because a magazine is printed in the United States is hardly justifiable.

While removal of tariffs on printed products obviously favors the United States printing industry in a significant way, we believe that the opening of borders will benefit both countries. Competition among U.S. printers has created a healthy climate for printing. Printers discover niches and specialties, and marketing strategies which enable them to survive in a competitive market. We feel that these same forces will be applied in Canada when the U.S. printer begins to look more into the Canadian market. It certainly should not escape Canada's attention that its largest exports are also in the areas where there are no tariffs. In this regard, we firmly believe that free trade with Canada will improve opportunities for printers on both sides of the border.

In conclusion, we reiterate our strong support for the proposed agreement. We believe $500 million in additional business is worth our endorsement and we hope yours as well. However, as we support the agreement and urge its approval, we do not intend to relax the pressure to remove the remaining prohibitions to free trade in printed products.

U.S. - CANADA TRADE IN PRINTED PRODUCTS 1975 - 1986 (MILLION U.S. $)

Year	Total U.S. Exports	Total U.S. Imports	Books U.S. Exports	Books U.S. Imports	Periodicals U.S. Exports	Periodicals U.S. Imports	Catalogs U.S. Exports	Catalogs U.S. Imports	Newspapers U.S. Exports	Newspapers U.S. Imports	Advertising Printed Matter U.S. Exports	Advertising Printed Matter U.S. Imports	All Other Printed Matter[1] U.S. Exports	All Other Printed Matter[1] U.S. Imports
1986	579.5	393.4	206.3	104.3	265.4	51.0	5.8	33.2	14.9	94.7	14.0	n.a.	73.1	110.2
1985	598.0	321.2	240.3	87.4	255.7	31.4	6.2	34.4	13.5	82.0	13.7		68.6	86.0
1984	646.5	281.7	261.7	84.2	268.9	12.0	7.8	46.2	13.7	82.0	18.3		76.1	57.3
1983	610.2	228.3	240.3	81.2	243.8	9.0	7.2	22.8	14.4	68.7	14.5		90.0	46.6
1982	592.0	167.6	240.6	47.5	239.4	6.2	6.2	15.7	13.0	60.8	13.3		79.5	37.4
1981	558.2	142.4	224.0	39.3	223.3	10.1	6.1	12.4	10.3	49.3	11.9		82.6	31.3
1980	481.8	133.1	193.8	39.9	197.2	27.6	5.5	10.1	9.4	34.0	10.8		65.1	21.5
1979	447.8	91.4	180.1	23.6	191.2	24.6	4.2	6.9	7.6	18.2	8.6		56.1	18.1
1978	394.5	81.4	149.0	15.6	166.1	10.5	4.4	6.3	5.5	35.4	9.3		60.2	4.3
1977	346.1	66.0	151.0	11.5	132.7	5.6	3.7[2]	3.5	6.1	33.2	11.6		41.0	12.2
1976	310.9	65.0	145.1	20.2	113.4	5.9	2.8[2]	3.2	4.3	25.5	11.0		34.3	10.2
1975	262.1	50.4	120.0	11.9	99.0	6.7	2.8[2]	3.9	3.4	18.6	9.5		27.4	9.3

n.a. - Not Available

1) Includes posters, labels, decals, albums, blankbooks, calendars, postcards, greeting cards, maps, charts, globes, tourist literature, etc.

2) Includes directories, 1975-1977.

Note: Does not include individual shipments valued under $500 (exports).

Source: U.S. Department of Commerce, Bureau of the Census

W. Lofquist, 2/24/88

WORLD WIDE
($ MILLIONS)

1986	1,341.9	1,466.7	604	701.4	381	111.1	18.2	107.8	19.9	95.6	44.4	n.a.	274.4	450.8

Chairman GIBBONS. Mr. Stein.

STATEMENT OF MICHAEL H. STEIN, COUNSEL, AMERICAN PLYWOOD ASSOCIATION

Mr. STEIN. Chairman Gibbons and members of the committee, my name is Michael Stein, and I am counsel to the American Plywood Association, which represents over 75 percent of U.S. plywood production. Let me begin by thanking you for this opportunity to appear today on behalf of the American Plywood Association to discuss the serious consequences that the Free Trade Agreement could have on the U.S. plywood industry.

To provide you with some background, the U.S. plywood industry directly employs 35,000 workers in 169 plants in 24 states. In addition, tens of thousands of other workers are indirectly employed by the U.S. plywood industry, in logging, trucking and other related activities. Currently, the U.S. plywood industry is a vibrant, efficient industry, but today I am here to discuss a problem.

The free trade agreement with Canada, by eliminating high plywood tariffs, would open our market to Canadian plywood producers. Unfortunately, the agreement does not remove most nontariff barriers to the use of U.S. plywood in Canada. Our market will be open to Canada, but the vast majority of Canada's construction plywood market will be closed to us. The results could be disastrous for the U.S. plywood industry. While the plywood industry is not now opposing the FTA, the industry feels strongly that the unfair Canadian nontariff barriers must be eliminated if our tariffs are eliminated.

Currently, the United States imposes a 20 percent tariff on plywood imports. Canada imposes a 15 percent tariff. Thus, there is little plywood trade between the two countries. Further, Canada maintains substantial nontariff barriers. These barriers prevent the use of plywood made with D-grade veneers—over 70 percent of U.S. production—in Canadian construction.

To date, Canada has refused to adopt standards based solely on performance that would allow our plywood to compete in Canada on the basis of its strength and durability; rather, Canada maintains the prescriptive limitation on the use of D-grade veneer. Canadian claims that CDX plywood is used in Alaska and has been used in Canada during Canadian plywood strikes. Indeed, U.S. CDX plywood is used successfully around the world in climates as severe or more severe than Canada's. On the basis of structural performance for its intended uses, there is no difference between CDX and Canadian CC plywood.

In any case, if Canada were to adopt standards based solely on performance—the strength and durability of plywood—and eliminate its prescriptive limitations, such standards would fully ensure that plywood is acceptable for its intended use without discriminating against U.S. plywood. The Canadian standards are arbitrary non-tariff barriers that protect the Canadian industry.

This is not a new issue. In the Tokyo round of multilateral trade negotiations, the United States and Canada agreed to reduce plywood tariffs once the standards issues were resolved. When those efforts failed, the two countries agreed to maintain current tariff levels. Since that time, it has been the position of the U.S. Government and industry that plywood tariffs should only be reduced if the nontariff barriers are eliminated. Unfortunately, that position was changed in the FTA.

Under the FTA, the Canadian Mortgage Housing Corporation (CMHC) must review the nontariff barriers on plywood used in CMHC housing, less than 10 percent of Canada's construction market. If CMHC permits use of CDX plywood, tariffs on all structural panels are to be eliminated under a 10-year phasedown. If CMHC does not permit the use of CDX plywood, and that decision is not affirmed by an expert panel, then the United States may delay tariff cuts on structural panels. In other words, if Canada grants access to less than 10 percent of its construction market, we must give full access to our market, which is 10 times the size of the Canadian market.

How can this happen? During the FTA negotiations, Canada argued that its nontariff barriers were promulgated by a private organization, the Canadian Standards Association, and were outside of its control. On the contrary, the impediment to use of U.S. plywood in Canada is Canada's National Building Code, published by the Canadian National Research Council, a Federal Government organization, and ultimately adopted by the Provincial governments. While the National Building Code has incorporated the private, discriminatory standards proposed by CSA, there is nothing to prevent the Government of Canada from eliminating or modifying those standards.

With effective protection for its home market and complete access to the U.S. market, the Canadian plywood industry will injure our industry. The likeliest result is an increase in Canadian capacity not justified by market forces, either by modernization or expansion. This will dramatically increase shipments to the United States and will artificially depress prices, especially during market downturns. Even if there is no Canadian capacity expansion, our analysis shows that in a good year the U.S. industry will lose more than $125 million in revenues. Not only will this seriously injure U.S. plywood producers, but in the long run, this inequitable situation will tend to move jobs north of the border. New facilities will be built in Canada, where there will be assured access to both markets, instead of in the United States. In contrast, U.S. producers will be denied the promise of the FTA—a chance to compete on an equal basis in Canada. Trade in plywood will be totally unfair.

This problem can be solved if the administration or Congress has the will to insist that the Canadian market be moved. This had been the position of the U.S. Government during and since the Tokyo round, and it should be the position today.

Our Government should negotiate with Canada, before eliminating the plywood tariffs, to eliminate the nontariff barriers. If such negotiations fail, action must be taken that would ensure a solution to this problem. If necessary, the United States should utilize alternative means to compel Canada to eliminate its unfair restrictions on U.S. plywood or to prevent hose restrictions from injuring the U.S. industry.

Legislation implementing the FTA provides an opportunity to address this problem. If the problem is not resolved before legislation is presented to Congress, a solution should be mandated in that legislation.

In conclusion, the current situation is fundamentally unfair. It will injure the United States, unfairly limit exports and increase imports. It will injure the U.S. plywood industry. This situation should be changed. It is now possible to solve this problem that could cost this industry hundreds of millions of dollars in 5 to 10 years—a problem that will be substantially more difficult to solve then. I hope that with your assistance this problem will be forcefully address in the FTA implementing legislation.

Chairman GIBBONS. Thank you very much for your patience.

Thank you Mr. Stein. I appreciate the enlightened attitude of your industry working along with the agreement that obviously is not perfect from your point of view, but you show the statesmanship that you are willing to try to find solutions. I hope that other critics will do as well.

Mr. Fluke, I am glad that you have brought your associate here. It is good to have someone here who is larger than the textile industry that is not up here whining and crying all the time.

What is it they have been calling George Bush—wimp? I know one industry that is a wimp. I guess I am going to get a lot of mail from them after I referred to the textile and garment industry as a bunch of wimps. I am glad you are here and ready to compete. That is the future of America.

Mr. FLUKE. That is correct, Mr. Chairman.

Chairman GIBBONS. I am satisfied with your testimony, from all of you. I realize the agreement is not perfect, but at least we are attempting to move ahead in our desired goal to rationalize our system so that we can better survive in a competitive world and so that America can in the long run be more competitive.

Mr. Crane?

Mr. CRANE. The only question I have is for you, Mr. Stein.

I do not understand the plywood industry, but a deep grade veneer, is that cheaper to produce than what the Canadians routinely produce?

Mr. STEIN. Basically a veneer is what is a very small slice of a tree and you take the tree and you peal it and it is very, very thin, and wherever there is a branch there is a knot a knots hole and most mature trees that are made into plywood yield D grade veneers basically because that is the number of knots that are in there.

Mr. CRANE. You referred to this CDX versus the Canada CC. Is that CC a kind of plywood that differs in terms of the cost?

Mr. STEIN. Yes. It has four knots in it. There is less raw material that can be used to be made into CC grade veneer because there are four logs that yield the four number of knots, and the C and D classifications are based on the number of—and size of the knots in any given piece of plywood.

Mr. CRANE. That process then is more expensive than CDX?

Mr. STEIN. That is correct.

Mr. CRANE. What has prompted the Canadians to fasten those added costs onto construction in Canada rather than going to CDX and using strength and durability criteria as you recommend?

Mr. STEIN. Protectionism. Because the Canada industry wants to keep its market to itself, it does not allow the use of the major grade of plywood that is used in the United States and keeps U.S. plywood out.

Mr. CRANE. Is that from fear of U.S. competition and the absence of tariff barriers?

Mr. STEIN. We believe that is the major reason. Earlier in 1987 the Canada Standards Association did appropriate performance standards that are fundamentally the same as the performance standards in the United States and because of lobbying from the Canada Council of Forest Industries they then added a prescription that D grade veneers could not be used.

Mr. CRANE. What is the estimate for the extent of increased cost of the average house because of their arbitrary standard with regard to banning CDX?

Mr. STEIN. I am afraid I will have to supply that, Congressman.

[The following was subsequently received:]

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November 23, 1988

Ms. Diane K. Kirkland
Staff Assistant
Committee on Ways and Means
House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Ms. Kirkland:

At the February 29, 1988 Ways and Means hearing concerning the Canadian/U.S. Free Trade Agreement, I testified on behalf of the American Plywood Association concerning the deleterious effects of Canadian plywood protection on the U.S. industry. In short, Canada's prescriptive plywood standards -- not based upon the strength or durability of plywood -- effectively bar U.S. plywood from the Canadian construction market while Canadian plywood has free access to the U.S. market. Over time, the combination of a protected Canadian market and an open U.S. market could seriously injure the U.S. industry.

During that hearing, Congressman Philip Crane asked about the cost of this protection to the Canadian consumer. Data provided by the American Plywood Association show that the cost of the protection to an individual consumer is relatively small. For example, the average Canadian home uses about five thousand square feet of plywood. Efficient U.S. plywood manufacturers, effectively barred from the Canadian market, sell plywood for as much as $25 to $30 ($U.S.) per thousand square feet less than Canadian plywood producers. Thus, on an individual home, the extra cost of this protectionism may only be from $125 to $150.

While this cost is not excessive for an individual consumer, protected Canadian plywood manufacturers, which produce the plywood for hundreds of thousands of homes, certainly significantly benefit from this protection.

Please let me know if I can be of any further assistance.

Sincerely,

Michael H. Stein

Mr. **Crane**. The only reason I raise that question is I am surprised that consumers up there, if they really understand their costs in this area, have not organized opposition and expressed it through their provincial assemblies and their National Government.

Mr. **Stein**. Of course at the time the tariff barriers are sufficiently high so that this has not been an issue and will become an issue when the tariffs come down in 2 year increments in 3 or 4 years.

One hopes then the Canada consumers will put pressure on their Government, but it may be that this alone will not be sufficient to change the standards as this committee, subcommittee, is well aware, it quite often happens that protectionists pressures do succeed.

So we would be more comfortable if this issue were taken care of up front rather than hoping that the issue resolves itself later on. That is rather a large risk for the industry to take, we feel.

Mr. **Crane**. I would hope so, too.

Thank you for your testimony.

Chairman **Gibbons**. Thank you very much.

This concludes our hearing for today and we will meet again tomorrow at 2 o'clock in this same room to continue our hearings on this agreement.

Thank you very much.

[Whereupon, at 4 p.m. the subcommittee adjourned, to reconvene at 2 p.m., Tuesday, March 1, 1988.]

UNITED STATES-CANADA FREE TRADE AGREEMENT

TUESDAY, MARCH 1, 1988

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman Gibbons. Good afternoon, ladies and gentlemen. Glad to have you here. We continue our hearings on the United States-Canada Free Trade Agreement.

We have a panel consisting of the International Union of United Automobile and Aerospace and Agricultural Workers, the Motor Vehicles Manufacturers Association, the Motor Equipment Manufacturers Association, the Automotive Parts & Accessories Association, and the State of Michigan.

I don't know whether you all have designated anyone to speak first, or whether you just intend to speak in order of the way I called you here. Do you have any preference on the panel as to how you speak?

All right, we will just start off in the way in which you are listed. Mr. Beckman, for the International Auto Workers Union.

STATEMENT OF STEVE BECKMAN, INTERNATIONAL ECONOMIST, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)

Mr. Beckman. Thank you, Mr. Chairman. Our statement has been submitted to the subcommittee, and I hope we will be——

Chairman Gibbons. Yes, sir. And if you will allow me to interrupt, may I say that, without objection, all statements written will be included in the record as if they were delivered. Go right ahead.

Mr. Beckman. I would like to proceed quickly, so that everyone will get a chance to speak, and we can move this panel along.

I would like to state at the outset that the UAW has enumerated a number of problems that it has with the agreement as negotiated by the U.S. and Canada. And from our point of view, this is less a free trade agreement than what I would call a standstill agreement regarding barriers to trade and the transfer of goods and services across the United States-Canada border.

Since auto trade accounts for more than a third of trade between the United States and Canada, it provides a good illustration of the ways in which this is not a free trade agreement and the deficiencies of the agreement for the U.S. auto industry.

I would like to just describe the three problems that we see as the most pressing facing the U.S. industry. And I want to emphasize that by "the U.S. industry" I mean production and employment in the United States, not the profits or sales of multinational corporations that happen to have their headquarters based in the United States.

First, the high and continued increasing level of imports of vehicles into the U.S. market. Foreign companies and U.S.-based producers are contributing to this growth.

Second, the rapid growth of auto-assembly capacity to produce low U.S.-content vehicles in the United States and Canada. These plants result from investments by foreign companies alone or in joint venture with domestic auto producers.

With relatively stagnant market size, the creation of significant excess capacity is occurring. We fear that these new plants, using a large share of imported parts, will displace traditional assembly plants that use a far greater volume of U.S.-produced parts, especially engines and transmissions.

The likelihood of plant closings raises the question of whether United States or Canadian plants will be disproportionately affected.

Third, the increased use of imported parts by U.S.-based producers in their North American assembled vehicles. There is much more U.S. employment in the production of materials and parts than in auto assembly. This is a very important segment of the industry, as other panelists will describe.

Not only that, the design and engineering of parts is an important area for advanced technology for the United States, and for the implementation and purchase of high-technology goods.

These are the issues that the UAW sees as the most pressing facing the U.S. auto industry. What does the FTA do to address these?

First of all, there is no increased efficiency that will result from the auto provisions of the FTA. The U.S.-based producers are already integrated across the border. There will be no further integration, from what I can see from the agreement, of the transplant companies, the foreign companies that have located in North America. There is no push towards increased efficiency for U.S. producers to help them compete with foreign producers.

On the issue of excess capacity in the North American market, there is general consensus that a large excess capacity exists. The safeguards in Canada, which certainly do not reflect a free-trade situation—will remain. They will provide an incentive for the North American producers to keep their Canadian assembly facilities in order to meet the production and value-added requirements that the Canadian Government has imposed on them.

And third, the increased use of imported parts, and this applies both to the U.S.-based companies and the transplant facilities. The rule of origin is too low. The 50 percent of direct cost of manufacturing is not high enough to require that a sufficient value of parts be purchased in the North American market, and there will in fact be inducements, for the continued increase in the importation of parts that will cause disruption for the U.S. parts industry.

In all these areas, the FTA, which is supposed to be beneficial for the U.S. industry and for the U.S. economy, falls far short by our standards.

There are other parts of the agreement which we feel also limit the benefits to the U.S. economy and reflect the lack of this being a free trade agreement, and these are the Canadian exclusions of culture, beer, the continuation of energy subsidies, the lack of intellectual property improvements, the continuation of postal-rate differentials—there are a number of other issues where Canadian subsidies or Canadian Government intervention in the marketplace continues, and the agreement does nothing other than grandfather those provisions.

So for the future, it provides less flexibility for the U.S. administration in meeting the needs of not only the auto industry, but of other industries as well. And in an industry that accounts for more than a third of United States-Canada trade, the major barrier to free trade or to unlimited trade between the two countries remains in effect and acts as an incentive to disproportionate Canadian investment and production.

On those bases, we find the agreement deficient and we hope that the Congress will understand our position, will see that the agreement is not in the best interest of the U.S. economy, and will not adopt the agreement.

Thank you.

[The statement of Mr. Beckman follows:]

Statement of
Steve Beckman, International Economist
International Union, United Automobile, Aerospace and
Agricultural Implement Workers of America (UAW)
before the
Subcommittee on Trade
of the
Committee on Ways and Means
United States House of Representatives
on
The U.S.-Canada "Free Trade Agreement"

March 1, 1988

Mr. Chairman, I am pleased to appear here today on behalf of Owen Bieber, President of the UAW, to present our views on the U.S.-Canada "Free Trade Agreement" (FTA). Because Canada is the largest trading partner of the U.S., and auto trade is such a large proportion of that trade, the UAW has a significant interest in the terms of the agreement. Careful examination of the final text has led us to conclude that the United States-Canada Free-Trade Agreement does not satisfactorily address the interests of American auto workers in auto trade, nor does the agreement promote U.S. employment and production which would reduce the large U.S. trade deficit with Canada.

The agreement eliminates tariffs between the two countries over ten years (some are eliminated immediately, some over five years and most tariffs are phased down over ten years) and changes U.S.-Canada trade in many product sectors. The implementation of trade laws is also affected by the FTA. Though the tariff elimination appears to be of broad significance, it effects relatively little trade. The majority of bilateral trade already qualifies for duty-free treatment. There will be gains and losses on both sides of the border from the elimination of tariffs, mostly on sensitive items.

The provisions of the agreement related to auto trade fail to eliminate the inequities in U.S. and Canadian implementation of the Auto Pact, which has set the ground rules for U.S.-Canada auto trade since 1965. In addition, the growing use of imported parts is not sufficiently discouraged by the agreement. Thousands of American auto workers' jobs would remain at risk under the agreement's terms.

One change made in the Auto Pact by the FTA was to restrict its coverage to those companies that already qualify for its benefits. The production and Canadian value-added requirements (safeguards) imposed on Canadian auto producers will continue, while the U.S. has no similar production requirements. One of the incentives to meet the Canadian safeguards, the ability to import duty-free from the U.S., would be eliminated in 10 years by the phasing out of the tariff on auto products included in the FTA, but another important incentive remains — the right to import duty-free into Canada from anywhere in the world. This benefit is worth an estimated $300 million annually to the Big 3 auto companies. Canada's use of these Auto Pact implementation conditions has contributed to disproportionate growth in Canadian vehicle assembly capacity. The continuation of these one-sided provisions under the FTA would serve to protect that Canadian capacity if cutbacks in overall North American production take place. The reaction of North American-based producers to the current trends in the growth of built-up imports and transplant assembly is likely to include plant closings to reduce excess capacity. The failure of the FTA to change the terms of the Auto Pact makes reduction in U.S., rather than Canadian, production a preferable move for the companies. A UAW proposal to adopt a U.S. production requirement was rejected by the Administration's negotiators.

The UAW believes that, under the terms of the FTA, the North American value required of vehicles to qualify for duty-free entry into the U.S. would be too low to prevent serious erosion in the North American content of vehicles produced by the U.S.-based companies or to significantly increase the North American value included in transplants. The Auto Pact now requires that 50 percent of the value-added in vehicles be of North American origin to enter the U.S. duty-free. The UAW sought to raise this figure to 75 percent. The FTA changed the requirement to 50 percent of the direct cost of manufacturing (excluding overhead, profits, management compensation and some other payments included in "value-added"), but this figure is not high enough to assure the use of locally produced engines, transmissions and other major components. Efforts of U.S. and Canadian workers and parts producers to raise the 50 percent figure were unsuccessful.

The "rule of origin" adopted in the FTA would create two problems. First, it would allow the Big 3 to shrink the North American content of their vehicles down to the new standard, which is far below the present level. The ability to import into Canada duty-free from anywhere in the world and the large assembly capacity in Canada mean that many North American parts producers would be jeopardized by this provision. Second, the transplants, even though they are not eligible for Auto Pact status, would be able to export vehicles to the U.S. from Canada duty-free and still import major parts and components.

Two other Auto Pact problems were created by the FTA. The GM-Suzuki joint venture, located in Canada, would be eligible for Auto Pact coverage, even though it is not currently meeting the Canadian safeguards. This would allow the plant to import into Canada duty-free from anywhere in the world, a benefit that no other transplant can obtain. This was clearly included to strengthen GM's support for the agreement. It would reduce GM's costs for assembling vehicles using a high proportion of imported parts.

Because Honda's Canadian plant currently meets the North American value added requirement for duty-free entry into the U.S., it would be able to continue that benefit, as long as it met the new, slightly tougher rule of origin, even though Honda's U.S. operation cannot ship to Canada duty-free. This gives Honda an incentive to increase its Canadian production, both for local consumption and for export to the U.S., rather than U.S. production. It is expected that Toyota and Hyundai would also be eligible to ship to the U.S. duty-free from their Canadian plants under the U.S. Auto Pact implementation provisions. Toyota's U.S. output would be assessed duties on entering Canada, just as Honda's would. The inequity in this situation should have been unacceptable to our negotiators.

The long phase-out of vehicle and original equipment tariffs — the longest possible under the FTA, 10 years — would retain a very large tariff differential between the U.S. and Canada until the very end of that period. Canada's 9.2 percent tariff may discourage exports to Canada by U.S. transplants, while the U.S. tariff of 2.5 percent presents hardly any problem for shipments to the U.S. by Canadian transplants, especially since it appears the U.S. tariff would not even apply to any Canadian-assembled vehicles.

Finally, the auto provisions of the FTA leave Canadian production incentives for Honda, Toyota and Hyundai in place until 1996. Honda is already producing in Canada and the others will begin within the next year. The duties these transplant producers owe Canada on imports there can be offset by the value of their Canadian production. This is nothing less than a subsidy of Canadian production, much of which will be sold in the U.S. These "duty remission" provisions give Canadian parts producers an advantage over U.S. sources in obtaining supply contracts with these transplants. The supplier relationships established in the early stages of plant operation are likely to continue beyond the 1996 expiration of the duty remission program. Unless the program is ended immediately, U.S. suppliers will be at a disadvantage now and in the foreseeable future.

These problems with the auto provisions of the FTA would be sufficient to cause serious UAW reservations regarding the agreement. Unfortunately, there are other provisions that present similar problems. Most provisions in the agreement affect future changes in law or practice. Since Canada's economy now has significantly more government intervention than the U.S., the agreement tends to lock in that imbalance. The agreement would tie both governments' hands in addressing trade problems that may arise in the future. The Administration specifically sought this arrangement to prevent a change in government in Canada from expanding government intervention there. But the FTA also restricts future U.S. presidents from reversing this country's current passive trade policy. Several sections of the agreement set precedents that will be used by the U.S. in the GATT negotiations that are already underway. There, the U.S. will try to obtain broader agreement to restrain government actions affecting industries and trade.

A number of industries were excluded from coverage under the FTA. Canada insisted that "cultural industries" be exempt and continue to be subject to Canadian government policies and regulations, whatever their impact on trade with the U.S. As a result, the publication, distribution or sale of books, magazines, newspapers, films or video recordings, music television and radio broadcasts remain outside the FTA. The U.S. has regulations in many of these industries, but they are not as restrictive as Canada's.

Beer production and sale was also excluded from the agreement at Canada's insistence. Provincial rules in Canada make it easier to buy some brands of Canadian beer in the U.S. than in other Canadian provinces. Protection of small breweries in each province was the reason for Canada's reluctance to discuss this issue. The U.S. beer market is wide open.

In one industry in which the U.S. controls trade, the agreement would liberalize U.S. rules. Exports of crude oil from Alaska's North Slope are now prohibited. The FTA would permit Canadian imports of up to 50,000 barrels per day of North Slope crude oil. This may open the door to agreements with other countries to export Alaskan oil, making the U.S. more dependent on foreign sources and reducing the portion of oil transport reserved for U.S. maritime firms that use American crews.

The use of import fees was restricted by the agreement. The U.S. would have to phase out application of its 0.17 percent import fee, used to cover Customs Service costs, over five years; the loss of revenue will have to be made up with congressional appropriations. This provision would also prevent the U.S. from imposing an import fee on Canada to pay for the trade adjustment assistance program. The trade bills that passed the House and Senate this year both call for adopting such a fee on all imports.

The issue that fueled Canada's interest in these negotiations from the beginning, the application of U.S. trade laws to Canada, was resolved with some precedents that are unsettling to American workers. The anti-dumping (AD) and countervailing duty (CVD) laws of both countries would remain in effect for five years, while negotiations aimed at establishing a new system for treating products unfairly shipped between the U.S. and Canada proceed. The Canadian goal was to have domestic anti-trust laws (not trade laws) apply to dumped or subsidized traded goods, or to agree on a list of subsidies that would be actionable (all others being acceptable). During this period, binational panels would replace the courts in the review of administrative decisions in AD and CVD cases. American workers have nothing to gain by treating unfairly traded Canadian goods under domestic anti-trust law rather than the current trade statutes. Developing a list of unacceptable subsidies would be equally unsatisfactory — it would allow Canada to structure its subsidies to avoid U.S. action.

The FTA contains another provision that would change the procedures for handling Section 201 cases (petitions for relief from fairly traded imports). A special track would be set up to address problems with imports from Canada resulting from the phase down of tariffs included in the agreement. In such cases, relief would be limited to no more than restoration of the prior tariff rate for a maximum of three years. This is a sharp restriction on actions otherwise available under Section 201.

For cases filed under Section 201's regular procedures, import relief would exclude imports from Canada if they were less than 10 percent of worldwide U.S. imports of covered goods. This restriction, combined with the above provision, would make Canada more likely to insist on the U.S. following through on a Section 201 case rather than agreeing to negotiate import restrictions outside that process, such as voluntary restraint agreements. Achieving relief for a U.S. industry from Canadian imports could be more difficult under these circumstances.

The sections of the FTA that cover services and investment would set important precedents for the new GATT round as well as influencing U.S.-Canada economic relations. The services agreement covers a host of service industries, but the transportation sector was excluded because of U.S. objections to its maritime provisions. Existing laws and practices are unaffected — the agreement only requires that revised or new measures treat the other country's firms and individuals no worse than its own, allowing the ability to sell services in either market and to invest so as to be able to sell services. State and provincial measures governing service businesses are not directly affected by these provisions. The key difference between opening markets in goods and in services is that services generally create employment in the market where the service is sold, not in the producing company's home market. This is true for the agriculture, mining, construction, wholesale trade, real estate and commercial services covered by the agreement. Since the U.S. market is already open, there is little chance of U.S. employment gains resulting from the FTA's provision. The same applies to the potential impact of a GATT agreement. The employment growth will come in the countries that open their markets to foreign firms and investment. By pushing this issue, the U.S. may be expanding opportunities for U.S. firms, but it is not helping American workers or domestic employment.

The investment and financial services provisions of the FTA have an effect similar to the services provision. In investment, Canada limited its ability to review bids to acquire Canadian firms, but did not abandon that right entirely. The Administration, on the other hand, is strongly opposing an amendment to the House trade bill that would require the government just to collect information on foreign investments. The FTA provision would also restrict government use of "performance requirements" — conditions that investors must meet in order to get approval for their projects. This limits the use of important industrial policy tools that the UAW has pressed the U.S. to utilize. To the extent that Canada does, indeed, open up its market more to foreign investment (the U.S. couldn't open any wider), investment may be diverted to Canada from the U.S. That is not in the best interests of American workers either. In addition, important Canadian performance requirements and other investment restrictions in autos, culture, basic telecommunications and energy remain in place under the FTA; the U.S. has very few similar measures "grandfathered" by the agreement.

The FTA opens up Canada's financial services market for U.S. banks, insurance companies and other financial service firms (e.g. credit card companies, consumer loans). The employment generated by this new business will be located in Canada, not in home offices of U.S.-based firms. As with investment, the U.S. market is already open, so no benefits for U.S. employment can be expected.

CONCLUSION

Even this extensive review of the FTA has not covered all the areas included in the agreement. It does, though, explain those elements of the agreement that are likely to have the greatest adverse effect on American workers. There is significant U.S. opposition to the agriculture, energy, culture and dispute settlement provisions as well.

The result of the negotiations with Canada is more a "standstill" agreement than a "free trade" agreement. It permits impediments to free trade in a variety of important industries. By focusing on opening investment opportunities in Canada (services, financial services, etc.) the FTA reinforces a long-standing U.S. corporate response to the imposition of trade barriers —invest behind them. If this Administration showed a strong commitment to trade balance and export promotion (which would balance the employment effects of increased U.S. imports), we would be less concerned about the lip-service paid to breaking down trade barriers and the vigorous promotion of foreign investment. However, the incredible accumulation of trade deficits during the past six years and the failure to respond to the complaints of U.S. exporters provide ample basis for cynicism. We expect that the FTA on its own, and as a precedent for the GATT round, will provide even better opportunities for American corporations to serve markets abroad, but in a way that offers little benefit to American workers.

It is this fundamental feature of U.S. trade policy to which the UAW and the vast majority of American workers object. The FTA does, indeed, reflect the Reagan Administration's trade policy. It is a policy that has caused serious adverse effects for millions of workers and left the U.S. with trade deficits in materials, basic goods and high technology goods. The FTA does not address this policy failure.

Mr. Chairman, the UAW strongly believes that adoption of this agreement would not serve the interests of our members or other workers throughout the nation. The free market approach to economic policy practiced by the Reagan Administration would be enshrined by this agreement, yet much Canadian government intervention in its economy, such as the one-sided Auto Pact safeguards, would remain. There is no evidence that this agreement would contribute to reducing the U.S. trade deficit with Canada or significantly expand nationwide employment opportunities for American workers.

Chairman GIBBONS. Motor Vehicle Manufacturers Association.

STATEMENT OF THOMAS H. HANNA, PRESIDENT, MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.

Mr. HANNA. Thank you, Mr. Chairman.

I am Tom Hanna, president of the Motor Vehicle Manufacturers Association of the United States. We are a trade association for the U.S. car, truck, and bus manufacturers, and MVMA's member companies produce more than 97 percent of all domestically built motor vehicles.

Trade in automobiles, trucks, and parts makes up more than a third of the entire trade balance between the United States and Canada. It now exceeds $46 billion a year.

So obviously, our member companies have been very involved with the development of the free trade negotiations, meeting and advising U.S. officials about the impact of certain proposals on the automotive industry, and reviewing the results in the agreement which was signed by the President in January.

First, in light of the extensive discussion surrounding the signing of this tentative agreement, I want to convey to the subcommittee, on behalf of all of the automobile and truck manufacturing companies in MVMA, our belief that this has been an important and worthwhile initiative by the two governments. Given the pressures on the entire international trading system, I think it would have been very unfortunate for the two countries with such clear geographic, historic and economic ties, to have let this opportunity pass.

Second, based on our companies' review of the details of the automotive provisions, we believe that this is a good and solid agreement for this industry, and one that advances U.S. national interests as well. The proposed free trade agreement maintains and recognizes the historic status of the auto pact as a unique and successful arrangement between Canada and the United States. I think it is fair to say that the auto pact is really the parent, or at least the grandparent, of this entire free-trade initiative. It is precisely because of the success of the auto pact to both countries over the past two decades that the idea of a broader, more comprehensive free-trade initiative was even considered by the two governments.

Third, the free trade agreement calls for the creation beyond the auto pact of total free trade in motor vehicles produced by the new auto-manufacturing companies with facilities in the United States and Canada, provided they meet an agreed 50 percent rule-of-origin requirement. We recognize that there was some disappointment that this rule of origin was not set at a higher figure. U.S. negotiators actually first asked us to consider a 35 percent rule, which is the standard now applied in the United States-Israeli Free Trade Agreement. But we advised them that 35 percent was too low for the automotive sector. While many of our member companies had different ideas of what that particular percent should be, the figure MVMA ultimately recommended was 50 percent, and that was what was agreed to. While most of our companies could have accepted a higher figure, nonetheless, all agreed that the 50-percent rule will do the job it was designed to, and that is to assure that the benefits of this agreement go to the companies and products which can fairly be considered as Canadian or American.

Fourth, the proposed agreement takes on and resolves most of the trouble spots which were developing in the bilateral auto trade. Canada's duty-remission programs for the automotive sector, for example, are eliminated or phased out. These programs had become a major complaint from those of us in the industry, as well as many in Congress, who felt that they created an unfair investment incentive for prospective parts and vehicles manufacturers to build facilities in Canada.

Up to now, these programs haven't involved a lot of money or built up enough steam to cause a serious problem, but the potential was there. With overcapacity in North America the major concern facing the automotive industry, it made no sense for the Canadian Government to lure more foreign auto investment, especially when much of that production would be headed for the U.S. market. The negotiations settled the duty-remission issue. The agreement doesn't eliminate this whole program immediately, but the United States did get Canada to stop this approach and to shut it down completely as these individual commitments to companies expire over the next decade. While not our first choice, that is a compromise we could live with.

Fifth, the agreement calls for a blue-ribbon panel to address the competitiveness of the North American automotive industry. This could be construed as a simple gesture to a politically sensitive sector, but it could also signal the serious reaffirmation of both governments to work cooperatively to compete in a very tough global trading market. Given the proper charter and membership, I think there is a very constructive role for such a panel to play. MVMA has been concerned for some time now that without a resolution between the two countries on ways to deal with growing competition and vehicle overcapacity in North America, the natural competitive instinct of each Government to protect its share of automotive production and employment could create very serious trade problems, to the detriment of working men and women on both sides of the border.

Finally, we believe that this is an agreement that looks to the future and confirms the significance of each country to the other as a major trading partner. It will give the North American auto industry a small but helpful boost in the highly competitive global trading system.

On behalf of all of its member companies, MVMA wishes to join with other businesses and coalitions in urging the Congress to approve the free trade agreement in 1988. It is an important agreement, one on which we in industry, as well as those in government, have spent a great deal of time and effort. We believe it is deserving of the Congress' support, and look forward to working with you to secure its passage.

Thank you very much, Mr. Chairman.

[The statement of Mr. Hanna follows:]

STATEMENT OF THOMAS H. HANNA, MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.

I am Thomas H. Hanna, President of the Motor Vehicle Manufacturers Association of the United States* (MVMA) whose members produce more than 97% of all motor vehicles produced in the United States.

I appreciate the invitation to meet with the Subcommittee today to discuss the proposed U.S.-Canada Free Trade Agreement and, particularly, its impact on the U.S. automotive industry.

No single factor has more directly challenged U.S. motor vehicle manufacturers over the past decade than the internationalization of the domestic automotive market, beginning with the dramatic increase in the sale of imported automobiles in the United States over the past decade, and more recently, with the establishment of new automotive manufacturing plants in North America by subsidiaries of foreign-owned companies. Therefore, trade policy issues are of great interest to MVMA and its companies.

Last October, following two years of serious discussions, negotiators from the United States and Canada reached agreement on the terms of a comprehensive Free Trade Agreement (FTA). The proposed agreement is unprecedented in its scope and detail, providing for the complete removal of tariffs and most quota restrictions. But it also proposes ground-breaking arrangements in such areas as dispute settlement, services and investment.

The automotive industry is a major factor in U.S.-Canadian trade relationships. In 1986, more than $46 billion in automotive products were exchanged between the two nations, representing fully one-third of all U.S.-Canada trade. Obviously, any agreement which proposes to modify the terms of trade between the two countries is a subject to which our member companies give serious attention.

Before reviewing the terms of the FTA and the particular development of the automotive industry in North America, I want to state MVMA's strong belief that this has been an important and worthwhile initiative by our two governments. Given the pressures on the entire international trading system, I think it would have been very unfortunate for two countries with such clear geographic, historic and economic ties to have let this opportunity pass.

MVMA followed the negotiations closely, meeting and advising with U.S. negotiators regularly to discuss and assess the impact of certain proposals on the automotive industry. After reviewing the automotive terms of the FTA carefully, MVMA has concluded that it is a good and solid agreement for this industry, and one that we believe advances U.S. national interests as well.

In particular, we believe that the automotive provisions of the Free Trade Agreement are a reasonable and fair compromise of each government's objectives and special concerns. It takes on and resolves most of the trouble spots which were beginning to cause problems in the U.S.-Canada auto trade relationship in recent years. For the traditional U.S. vehicle manufacturers, the FTA preserves the status of the 1965 AutoPact and some of the special trade benefits given those companies for the enormous investment in North American plant and equipment which were made in the years that followed. But it also offers the possibility of free trading rights for the new companies establishing plants in North America, provided their products contain sufficient North American content to qualify.

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*MVMA members are: Chrysler Corporation; Ford Motor Company; General Motors Corporation; Honda of America Mfg., Inc.; M.A.N. Truck & Bus Corporation; Navistar International Transportation Corp.; PACCAR Inc; and Volvo North America Corporation.

In order to evaluate the automotive provisions of the Free Trade Agreement, it is necessary to understand the development of U.S.-Canada automotive trade over the past two decades.

I. U.S.-Canada Automotive Trade: An Early Trade Success Story

Automotive trade between the United States and Canada offers a striking example of the potential benefits of freer trade between the two nations. It also is a good case study of the sensitivities that are caused by some fundamental differences between the two and some of the problems which arise as a result.

In the early 1960s, the Canadian government was concerned over the condition of its automobile industry. Despite wages which were some 30 percent less than those in the U.S., the Canadian industry was a higher cost, relatively inefficient producer protected by a 17.5 percent tariff rate. The cause of the Canadian industry's problems were the short and more expensive production runs inherent in manufacturing as complete a range of vehicle models in Canada as in the United States, but for a market only one-tenth the size.

In an effort to increase Canadian production and generate more automotive trade with the U.S., Canada established a duty remission program in 1962. When a U.S. radiator manufacturer filed suit against this program under U.S. trade law, the two governments entered into negotiations to resolve the dispute. What emerged from these negotiations was the Automotive Products Trade Agreement of 1965, or the AutoPact as it is commonly known.

The Pact provided for duty-free passage of new automobiles, trucks, buses and original equipment parts between the two countries, subject to certain conditions and exceptions. The most important of these were:

-- First, that several automotive equipment categories -- such as certain specialty vehicles, used vehicles, tires and replacement parts -- were excluded from the arrangement.

-- Second, Canada privately asked the Canadian subsidiaries of U.S. car and truck manufacturers to make certain investment and production commitments which we now call the Canadian 'safeguards'.

The 'safeguards' required that a company assemble roughly as many cars or trucks in Canada as it sold there and that approximately 60% of the value-added of the vehicles sold must be Canadian. The right to import duty-free into Canada under the AutoPact was made contingent on the companies agreeing to these commitments.

The Canadian government's justification for the 'safeguards' at the time was the fear that with a completely unprotected domestic market, Canada would evolve into a supplier of raw materials and components for the North American industry, while the manufacturing plants and jobs would gradually move to the larger, more lucrative market in the U.S. These fears were compounded by the economic reality that the entire Canadian auto and truck industry consisted of subsidiaries of U.S.-owned corporations.

The United States government did not object to Canada's action at the time. U.S. officials believed these measures were only intended to ease the transition as the tariff barriers between the two countries' automotive industries were removed. But, in Canada, the 'safeguards' became a permanent feature of the AutoPact. With the current focus on the U.S.-Canadian trade relationship, the continuation of these unilateral requirements has come under renewed criticism.

MVMA's members clearly understand and sympathize with that criticism. But the difficulty in dealing objectively with safeguards is that they have become extremely significant in the Canadian national political consciousness, while at the same time their operational impact has become irrelevant. The Canadian subsidiaries of MVMA's member companies for a variety of historical and economic reasons, now so far exceed these requirements that they have no practical effects on the companies' operations. They do not affect any decisions concerning sourcing, investment, production, or when necessary, plant closings. And because the conditions and numerical goals they set are relics of an earlier economic period when the Canadian industry was quite small and self contained, they will not affect any such decisions in the future.

The Pact has resulted in the nearly total integration of the North American automotive industry. Bilateral automotive trade which was less than $700 million in 1965, now exceeds $46 billion per year. The $22 billion in U.S. automotive exports to Canada is the single largest manufacturing export in the U.S. trade balance. U.S. auto and truck exports to Canada, for example, offset a substantial amount of the value of these products imported to the United States from Japan.

When the AutoPact was established, some feared that the merging of the industries in Canada and the United States would cause widespread employment losses in Canada. Instead, employment in the North American automotive industry over the past twenty years has shown gains in both countries. Recent employment information from Statistics Canada and U.S. Department of Commerce indicate that both countries have shown employment gains following the 1981-82 recession, with 1985 figures averaging over 1.1 million employees. The U.S. share of total North American motor vehicle industry employment has remained relatively steady at about 89% over the past several years. This corresponds to the relative size of the U.S.-Canadian market.

The automotive trade balance between the U.S. and Canada has fluctuated over the years as a result of many economic variables: changing consumer demands for different makes and models, relative exchange rates and differences in the rates of growth and recession in the national economies of the two. The U.S. has historically sustained a net deficit in assembled vehicles which, through most of the life of the Pact, was offset by the large U.S. surplus in parts exported to Canada. In 1982, Canada began to record a surplus in total automotive trade with the U.S.; however, over the last three years that surplus has narrowed considerably.

Despite the overwhelming success of the AutoPact over the past two decades, events in the North American automotive sector have presented issues which both governments had to address.

First, fourteen North American plants, owned by eleven different European and Asian automotive companies, are either in the process of building or already producing cars and trucks in the U.S. and Canada. These companies are not members of the AutoPact, a difference in status that had to be resolved.

Secondly, the Canadian government broke with the spirit of the AutoPact and took a unilateral action to encourage automotive investment in Canada through the use of a new duty remission program. Under this program, a company was given a remission on Canadian duties paid on automotive imports either for exporting Canadian auto products to the U.S. or elsewhere, or for committing to a certain level of Canadian investment.

Although the amounts of money involved to date have been relatively small, this program undermined the joint approach to automotive issues which the two governments had followed and was poised to become a serious trade dispute between the United States and Canada whether or not the free trade negotiations were initiated. These were the two main issues, then, that U.S. motor vehicle manufacturers asked our government to take up in the FTA negotiations.

II. The Automotive Provisions of the Free Trade Agreement

Despite entering the negotiations with different objectives concerning the automotive sector, negotiators for the two governments reached an agreement which satisfied the essential goals of each, recommitted the two nations to a bilateral approach in automotive trade, and resolved each of the potential disputes which were developing between the U.S. and Canada over automotive trade policy.

1. The AutoPact

The FTA maintains the status of the 1965 AutoPact as a unique and stable sectoral arrangement between Canada and the United States. MVMA believes that this was a wise decision. While, in design, it reflected the more tentative approach to liberalized trade of the 1960s, the AutoPact is really the parent of the entire free trade initiative. It is precisely because of the extraordinary success of this arrangement to both nations over the past two decades that the idea of a broader, more comprehensive initiative was even considered by either government.

Under the FTA, membership in the AutoPact is limited to current participants, and will not be extended to any new auto or truck company manufacturing in North America. This establishes a permanent standstill in the Pact and relieves U.S. concerns that the Canadian 'safeguards', which were imposed on U.S.-owned companies in the 1960s, would be expanded to apply to foreign-owned automotive companies, distorting investment and production decisions.

2. Tariffs

Duties on vehicles produced by companies which are not members of the AutoPact will be phased out over a ten-year period provided these products meet a 'rule of origin' of 50% to qualify for eligibility under the FTA. Remaining duties on tires and aftermarket parts, which were excluded from the provisions of the 1965 AutoPact, will also be phased out. As a result, ten years into this agreement, all trade in automobiles, trucks, buses and auto parts will be freely traded. This will apply both to the traditional North American companies operating under the AutoPact and to foreign-owned North American vehicle manufacturers, provided their products meet the 50% rule of origin.

3. Duty Remission Programs

Canada has a long history of employing duty remission and other kinds of incentive programs to generate investment in that country. As noted earlier, a duty remission scheme, offered to stimulate Canadian automotive investment in the 1960s, almost led to a major trade dispute with the United States at that time. This was resolved during negotiations between the two governments which abolished that duty remission program and established the AutoPact. The Canadian government began offering another duty remission program in the early 1980s as an investment incentive for Asian and European companies interested in setting up operations in North America.

With overcapacity in North America the most serious concern facing the automotive industry, it made no sense for the Canadian government to attempt to lure more auto investment, particularly when most of the cars would be headed for the U.S. market.

The FTA settles the duty remission issue. One form of remission, which companies earn as a reward for exporting from Canada, will end immediately when the agreement goes into effect. A second form of remission which the Canadian government granted to companies in exchange for specific investment commitments, will be phased out and terminated when each individual agreement expires, but no later than 1996. No further duty remission programs will be granted.

MVMA recognizes that the FTA did not eliminate the whole duty remission program immediately, an action which we supported. However, the negotiators were able to reach a compromise settlement, in which Canada did agree to abandon this unilateral approach to investment creation and to shut the entire program down within an agreed upon period of time. It is a compromise worth accepting and supporting.

4. Duty Drawback

Duty drawback is a program which allows a company to request the government to refund duties paid on imported materials when those materials are reexported from the country. While both the U.S. and Canada maintain a form of duty drawback, U.S. officials were concerned that under a Free Trade Agreement this program would disadvantage the United States. Companies considering new investment, it was thought, could be encouraged to invest in Canada and export most of the production to the United States in order to receive a 'drawback' on duties paid for importing into Canada. The resolution of this issue was the agreement by both countries to eliminate drawback for exports to the other effective January 1, 1989.

5. Rule of Origin

One of the subjects on which there was extensive consultation between MVMA and the U.S. negotiators during the FTA talks was the so-called 'rule of origin'. Basically, the two governments wanted to agree on a content-based rule of origin, which would qualify a product as American or Canadian under the FTA. At first, the negotiators wanted a single rule for all products, and proposed that 35% be the appropriate level, the standard now applying in the U.S.-

Israeli Free Trade Agreement and the Caribbean Basin Initiative. MVMA advised U.S. officials that 35% was absolutely too low for the automotive sector. Given high labor and other operating costs in North America, our members agreed that 35% did not cover enough of the vehicle manufacturing process.

MVMA recommended to our negotiators that 50% be adopted for the automotive sector, and 50% was the figure both governments finally agreed to. In addition, the formula by which the figure is calculated was tightened to make the standard even tougher than it had been under the AutoPact. The new rule of origin reflected a true cost of manufacturing so that a company could not add in advertising, profit, sales incentives and other incidental charges to artificially raise the content figures.

Some in the industry felt that a better number would have been 60%. Under the right conditions, MVMA would probably have supported a 60% figure. I understand that the U.S. government repeatedly proposed a 60% rule for automotive products, but the Canadian government did not accept this proposal and, as a result, the FTA contains a rule of origin of 50% for automotive products.

While many were dismayed that the Canadian government did not show more interest in a 60% standard, MVMA believes the 50% rule of origin will do the job it was designed to do and that is to ensure that the benefits of the agreement accrue to those companies and products which can reasonably and fairly be considered as Canadian or American in origin.

6. Used Vehicles

The Canadian embargo on the importation of used vehicles will be phased out. This will give manufacturers more flexibility to respond to shifts in supply and demand on both sides of the border for used vehicles, shifts which affect the supply and demand for new vehicles as well.

7. Automotive Panel

The agreement establishes a select panel on automotive trade and production in the U.S. and Canada. The stated purpose of the panel is to "assess the state of the North American industry and to propose public policy measures and private initiatives to improve the competitiveness in domestic and foreign markets".

This could be construed as a simple gesture to a politically sensitive sector. But it could also signal the serious reaffirmation of both governments to work cooperatively to compete in a very tough global trading market. Given the proper charter and membership, I think there is a very constructive role for such a panel to play.

III. Conclusion

MVMA and its member companies have been concerned for some time now that, without a resolution between the two countries on ways to deal with the growing competition and vehicle production overcapacity in North America, the natural competitive instinct of each government to protect its share of automotive production and employment could create some very serious trade problems. The Free Trade Agreement will not solve the serious overcapacity problem which is facing the industry, nor will it guarantee the continued competitiveness of the vehicle manufacturing industry in North America against relentless pressures from a growing number of auto exporting nations.

But MVMA believes the Free Trade Agreement is one that looks to the future, that confirms the significance of each country to the other as major trading partners, and that gives the North American vehicle manufacturing industry another helpful boost in the competitive global trading system.

In particular, we believe that the automotive provisions are a reasonable and fair settlement of the objectives and special concerns of each government. They remove most of the trade irritants and potential distortions in the automotive sector and create the basis for a free and open trading system in motor vehicles and components for both the traditional North American manufacturers represented in the AutoPact, and for the newer companies operating plants in both countries.

For these reasons we urge the Congress to pass the Free Trade Agreement and its separate implementing legislation when they are submitted by the Administration.

Chairman Gibbons. Thank you, Mr. Hanna. Mr. Bates.

STATEMENT OF CHRISTOPHER M. BATES, DIRECTOR OF POLICY ANALYSIS, MOTOR & EQUIPMENT MANUFACTURERS ASSOCIATION

Mr. Bates. Thank you, Mr. Chairman.

I am Chris Bates, director of policy analysis for the Motor & Equipment Manufacturers Association. We greatly appreciate the opportunity to testify here today on a trade agreement which has very great implications for our industry.

The FTA contains some positive features for our industry, including a phased reduction of Canadian tariffs on replacement components for motor vehicles, and the elimination in 1989 of Canada's duty-remission program as it applies to exports to the United States.

On balance, however, the free trade agreement is a major disappointment for the U.S.-motor vehicle parts industry. We do not believe it will do much to promote our industry's long-term international competitiveness. Moreover and perhaps more importantly, we lost a very good opportunity during the final stage of the negotiations to develop a much better agreement.

While no industry should expect this agreement to address all of its concerns, we feel that it dropped the ball in a very critical area, namely the rule of origin, which will determine the eligibility of many companies in North America for tariff reductions on both vehicles and component trade.

The agreement includes only a 50-percent requirement, rather than the 60-percent level recommended by a very broad cross-section of our industry, including parts-manufacturing companies on both sides of the border.

During hearings before the subcommittee on February 9, Ambassador Yeutter confirmed that the United States Government had offered, and that the Canadian Government had rejected, a 60 percent rule of origin. By rejecting this rule of origin, Canada shortchanged vehicle-parts manufacturers throughout North America.

There are several reasons why we believe a stronger rule of origin is essential to make this agreement a useful one. First, it would encourage a more rapid increase in purchases from United States parts suppliers by Japanese, Korean, and other third-country vehicle producers.

In particular, it would give these manufacturers greater long-term incentives to expand their purchases of U.S.-made engine, transmission, and other high value-added, advanced-technology components.

This business is of strategic importance to our industry, and is really the way we have to get our foot in the door in this area.

A 60-percent rule of origin also would foster more procurement, we believe, by traditional North American vehicle producers from United States and Canadian, as compared with third-country, producers.

This proposal was accepted as a reasonable compromise, as indicated earlier by Mr. Hanna, by big three producers and their Canadian counterparts during the final stages of the negotiations.

Third, a stronger rule of origin would partially offset existing incentives to increase use of third-country components, such as foreign trade zones, the GSP program, Tariff Provisions 806 and 807, and the multilateral duty-free sourcing privileges which auto pact members in Canada will retain under the terms of the FTA.

Finally, a 60 percent North American rule of origin would improve long-term balance within this agreement, in view of continuing auto pact commitments and safeguards which vehicle producers in Canada must meet under the auto pact, and an only gradual phaseout of duty-remission programs in Canada.

We recognize that there are some other provisions in this agreement which fall short of our original expectations and which remain of some concern. However, we have chosen to emphasize the need for a stronger rule of origin because we believe other issues are of less commercial importance. This is especially true, we believe, if one takes the long-term perspective.

In conclusion, we urge this subcommittee and other Members of Congress to take an active interest in improving automotive provisions of this agreement. Approval of the FTA in its present form without a clear statement of congressional intent to seek near-term improvements will reduce the likelihood that Canada will work with us to make necessary changes.

If Canada remains unwilling to modify its position on a stronger rule of origin before this agreement takes effect, we hope Congress will provide language in implementing legislation to encourage further negotiations to achieve this objective. Such negotiations should begin as soon as possible, but not more than a year after the FTA comes into force.

We recommend that Congress also grant the President sufficient authority to modify the rule-of-origin provisions in the free trade agreement through administrative action if Canada consents to such a change itself. We understand that the Canadian Government already has the authority to make such a change by regulation.

Thank you again for this opportunity to address this important issue before this subcommittee.

[The statement of Mr. Bates follows:]

MOTOR & EQUIPMENT MANUFACTURERS ASSOCIATION

PREPARED STATEMENT REGARDING THE IMPACT OF U.S.-CANADA FTA ON THE U.S. MOTOR VEHICLE PARTS MANUFACTURING INDUSTRY

Before the

HOUSE SUBCOMMITTEE ON TRADE

March 1, 1988

The Motor and Equipment Manufacturers Association (MEMA) appreciates the opportunity to testify before the Subcommittee on Trade regarding the impact of the U.S.-Canada Free Trade Agreement (FTA) on the U.S. motor vehicle parts manufacturing industry.

MEMA, founded in 1904, is the oldest continuous trade association in the motor vehicle industry. It is the only trade association devoted exclusively to representing and serving the interests of U.S manufacturers of motor vehicle parts and components, accessories, chemicals and compounds, and related equipment. With the exception of exterior body parts and tires, our members manufacture most components used in motor vehicles as either original equipment or aftermarket replacement parts.

Canada is by far our largest export customer, importing more than $13 billion worth of U.S. motor vehicle parts and accessories in 1986. In turn, we imported over $9.4 billion in parts and accessories from Canada in 1986. Based on part-year data, this trend continued in 1987.

U.S. export data, which are subject to undercounting, show a less favorable pattern of trade when combined with U.S. import data, but still indicate a very healthy bilateral parts trading relationship. It is in the interests of both countries that this relationship continue to prosper.

The FTA contains some positive features for our industry, including a phased reduction of Canadian tariffs on replacement parts for motor vehicles and the elimination in 1989 of Canada's duty remission on exports to the United States.

On balance, however, the FTA is a major disappointment for the U.S. motor vehicle parts industry. We do not believe it will do much to promote the long-term international competitiveness of the U.S. motor vehicle parts industry. Moreover, we lost a very good opportunity during the final stage of the negotiations to develop a much better agreement.

Provisions affecting automotive trade, which accounts for one-third of total U.S.-Canada trade, are a central part of the overall agreement. They therefore deserve very close scrutiny by all members of this Subcommittee and the full Congress.

While no industry should expect the FTA to address all of its concerns, this agreement drops the ball in a critical area: **the rule of origin which will determine eligibility for tariff reductions on motor vehicle and parts trade covered by the FTA.** The agreement includes only a 50 percent requirement, rather than the 60 percent level recommended by a very broad cross-section of U.S. and Canadian parts and vehicle manufacturers.

During hearings before this Subcommittee on February 9, Ambassador Yeutter confirmed that the U.S. Government offered, and the Canadian Government rejected, a 60 percent rule of origin. We continue to question the political and economic wisdom of this decision, and hope future discussions between our governments will reverse the mistake.

By rejecting a 60 percent rule of origin, Canada shortchanged vehicle parts producers throughout North America. The 50 percent rule in the FTA is inadequate, because it does not sufficiently promote the long-term competitiveness and prosperity of U.S. and Canadian parts manufacturers.

Justification for a 60 percent rule of origin

We believe a stronger rule of origin is essential to make the FTA a useful agreement from the standpoint of the U.S. parts manufacturing industry. Our industry is quite diverse, but is broadly unified behind achieving a 60 percent rule of origin.

There are several reasons why a 60 percent rule of origin is so important to U.S. parts manufacturers.

First, it would encourage a more rapid increase in purchases from U.S. parts suppliers by Japanese, Korean, and other third-country vehicle producers. In particular, it would give these producers greater long-term incentives to expand purchases of U.S.-made engine, transmission, and other high-value-added, advanced technology components.

This business is of strategic importance to U.S. parts manufacturers, as well as to their Canadian counterparts, who are trying to develop long-term commercial relationships with manufacturers of foreign-brand vehicles in North America and overseas. As so-called "transplant" vehicle production grows in North America, U.S. parts manufacturers must get their foot in this door or risk a serious decline in overall sales.

It is important to note that a 60 percent rule of origin is consistent with the announced plans of these manufacturers to expand investment and purchases in North America. We think it will accelerate progress in this direction, by reinforcing the economic signals provided by more favorable dollar exchange rates.

A 60 percent rule of origin also would foster more procurement by traditional North American vehicle producers from U.S. and Canadian rather than third-country parts manufacturers. This proposal would not jeopardise the international competitiveness of U.S. Big Three producers or their Canadian counterparts, which accepted it as a reasonable compromise during the final stages of the FTA negotiations.

Third, a stronger rule of origin would partially offset existing incentives to increase use of third-country components, such as foreign-trade zones, the GSP program, tariff provisions 806/807, and multilateral duty-free sourcing priviledges which Auto Pact members in Canada will retain under the terms of the FTA.

Finally, a 60 percent North American rule of origin would improve the long-term balance in U.S. and Canadian benefits from the FTA, in view of continuing Canadian Auto Pact safeguards and only gradual phase-out of Canadian duty remission schemes.

MEMA recognizes that there are other provisions in the FTA affecting the U.S. motor vehicle parts industry which are of concern or fall short of original expectations. We have chosen to emphasize the need for a stronger rule of origin for several reasons.

First, we believe the commercial value to U.S. parts manufacturers of a 60 percent rule of origin is much greater, particularly over the longer term, than other changes which have been proposed. These other suggested changes include elimination of Canada's Auto Pact safeguards and remaining duty remission programs.

Second, we believe a 60 percent North American rule of origin is a more realistic goal to pursue at this stage, given Canada's long-standing resistance to U.S. attempts to negotiate elimination of its Auto Pact safeguards and production-based duty remission programs.

MEMA initially recommended a single North American rule of origin in the FTA which would replace current Auto Pact arrangements, including Canada's production-to-sales ratio and value added requirements. This approach, while preferable, was adamantly opposed by the Canadian Government. These requirements currently do not appear to have a substantial impact on the parts sourcing decisions of Canadian Auto Pact members, but continue to have great symbolic importance in Canada.

Canada's duty remission programs also have been a source of concern to MEMA. However, under the FTA, the adverse impact of these programs should be considerably less than what would occur if the status quo were retained. Canada has agreed to end duty remissions on exports of automotive products to the United States in January 1989, when the agreement is scheduled to take effect. Duty remissions on exports to third countries are expected to remain comparatively modest.

By the mid-to-late 1990s, all Canadian duty remission programs will be phased out and Canadian Auto Pact members will be free to choose between meeting the FTA rule of origin or their existing Auto Pact commitments. To receive duty-free treatment for imports of vehicles and parts from the United States and Canada, North American assemblers of foreign-brand vehicles will have to comply with the FTA rule of origin. At a minimum, all U.S. imports of automotive products from Canada will be subject to this test.

Thus, a stronger rule of origin provision is essential to ensure long-term as well as short-term benefits to U.S. producers from the agreement.

In conclusion, MEMA urges this Subcommittee and other members of Congress to take an active interest in improving the automotive provisions of the FTA. Our members have a very great stake in promoting a healthy, efficiently integrated North American parts production base and strong market for our products.

The FTA does not move far enough in this direction. If approved in its present form without a clear statement of U.S. Government intent to seek near-term improvements, Canada is unlikely to work with us to make necessary changes.

If Canada remains unwilling to modify its position on a 60 percent rule of origin before the FTA takes effect, we hope Congress will provide language in implementing legislation to encourage further negotiations to achieve this objective. Such negotiations should begin as soon as possible, but not more than a year after the FTA comes into force.

We recommend that Congress grant the President sufficient authority to modify the rule of origin provisions in the FTA through administrative action if Canada consents to such a change. We understand that the Canadian Government already has the authority to make this type of modification by regulation.

Adoption of a 60 percent North American rule of origin will greatly expand the benefits of the FTA to the U.S. motor vehicle parts industry and will broaden support for the agreement. MEMA urges further efforts by the Administration and Congress to achieve this important objective.

Chairman GIBBONS. Thank you, Mr. Bates. Our next witness is Mr. Kadrich.

STATEMENT OF LEE KADRICH, DIRECTOR, GOVERNMENT AFFAIRS AND TRADE, AUTOMOTIVE PARTS & ACCESSORIES ASSOCIATION, INC.

Mr. KADRICH. Thank you, Mr. Chairman. Our president, Mr. Julian Morris, regrets that he could not meet with you today. I am Lee Kadrich, director of government affairs and trade for the Automotive Parts & Accessories Association.

As staunch supporters of the free-trade concept, APAA gave U.S. negotiators one basic objective for the talks: rid the North American automotive market of sales and investment distorting practices.

But what the administration accepted is a lopsided agreement that sanctions long-standing Canadian protectionism and unfairly favors Canadian parts and car production at the expense of U.S. manufacturing and jobs.

Let me review our four key concerns.

First, we fought to remove the local content and production rules that Canadian auto assemblers must meet to qualify as auto pact members. The membership rules for this powerful club require pact manufacturers to produce one car in Canada for each car sold there, and to create 60 cents worth of Canadian cars and parts for each dollar's worth of vehicles sold there. In return, the club members are afforded duty-free import of cars and parts from anywhere in the world.

Despite its free-trade banner, the FTA would codify these protectionist and one-sided rules, long opposed by our Government. It would guarantee a commitment to Canadian vehicle production, and also safeguard the North American market for Canadian-built parts, all at American firms' expense.

Second, we wanted Canada to end the multilateral sourcing privilege and to implement the auto pact, as the United States does, on a bilateral basis, with only United States and Canada firms enjoying the preference. As it stands, Canadian partsmakers would continue to get preferred treatment here, while U.S. exports would end up sharing the benefit of duty-free access with their third-country competitors.

While grandfathering in current auto pact participants, largely the big three, the proposal would slam the clubhouse doors shut on Japanese and other foreign-owned transplants in Canada.

The good news is that Japanese and other foreign-owned transplants in Canada would not be eligible for duty-free car and parts imports, and that is as it should be. The bad news is that the proposal puts no curbs on multilateral sourcing by the big three, which hit $2.3 billion last year.

By combining the Canadian content rules and the duty-free ride accorded other countries' suppliers, it is possible to envision cars built in Canada without a dime's worth of U.S. content.

Third, APAA also objects to the FTA's treatment of nonauto pact companies. While barring them from auto pact membership and sourcing privileges, the FTA would allow Canada to continue through 1995 its secret contracts with these foreign-based automakers. Each deal cuts the car company's duty payments in exchange for that automaker's commitment to Canadian car assembly and greater use of Canadian content.

Speculation is that these GATT-illegal contracts have benefits equivalent to pact membership, but we are not sure, because U.S. negotiators agreed to their continuation without ever seeing them. The bottom line, Mr. Chairman, is that Canada ensures that non-pact members, who cannot escape the duty, nevertheless would enjoy the fruits of this trade-distorting rebate program for as many as 7 more years.

Fourth, despite the fact that there is a growing overcapacity of car and parts production in North American, the FTA is silent on the crucial matter of Canada's substantial subsidies. Canada already sells itself to foreign suppliers as the ideal base for launching duty-free exports into the huge U.S. market.

By allowing Canada to add investment subsidies to their auto-policy quiver, we may as well draw a target over America. Japanese, Korean, and other foreign-owned supplier migrants lured there will gain a distinct competitive advantage in Canada's back door to the vast U.S. market.

To summarize, we have a proposed accord that is neither bilateral nor fair in its treatment of fully one-third of U.S. trade with Canada.

The future of American suppliers in the North American market depends on our success in building reciprocal free trade between Canada and the United States, and our industry's place in the global auto industry also hinges on our ability to rid North America of protectionism. Failure to dismantle Canada's barriers would make it very hard for the United States to press other countries to remove similar barriers that now block American auto parts exports, but we believe that success in this endeavor will benefit both United States and Canadian partsmakers alike.

Mr. Chairman, we ask this committee to help direct our negotiators back to the table to renegotiate the key issues we have discussed, with the goal of genuinely free, bilateral automotive trade.

Thank you.

Chairman GIBBONS. Thank you very much. Our next witness is representing the State of Michigan, Mr. Marc Santucci.

STATEMENT OF MARC SANTUCCI, ADVISOR TO THE GOVERNOR ON TRADE POLICY, STATE OF MICHIGAN

Mr. SANTUCCI. Thank you, Mr. Chairman. On behalf of Governor Blanchard, I would like to thank you for giving us the opportunity to testify today.

Although other committees have reviewed the free trade agreement and automotive trade issues, this is the first committee that we have requested to address. We did so because we know of the subcommittee's reputation as a champion of free trade, and one whose members look to open new markets and to eradicate protectionist barriers in other markets.

We feel it is very important to express our concerns to you and your staff, which is well regarded not only in Washington, but throughout the international trade community.

In general, the free trade agreement offers significant benefits to Canada and an improvement over the status quo for the United States. We very much wanted a free trade agreement that would eliminate protectionist measures that are practiced on both sides of the border.

We are deeply disappointed with the outcome of the negotiations as they relate to trade in automotive products. We wanted a true bilateral free trade agreement. I can't stress that point enough, because I know there are many who believe that Michigan was looking for more protection. We weren't; we were looking for less of it. For automotive trade, what we got was a skewed trade agreement—skewed in favor of Canada.

I would like to review some of the provisions of the agreement in an attempt to demonstrate why this agreement fails to live up to its name, the free trade agreement.

Automotive trade, as you have heard from the other speakers, accounts for over one-third of the bilateral trade between the United States and Canada. With the entry of the Asian manufacturers to the North American auto market, the effect of Canadian Government interference in trade and investment decisions can be harmful to U.S.-based producers and workers.

The multilateral sourcing aspects of the auto pact remain intact, along with the Canadian value-added requirements. According to the administration, only the big three remain eligible for these benefits and these requirements. However, even they admit that foreign companies can receive auto pact treatment by forming joint ventures.

In addition, since the auto pact will not become part of the free trade agreement, Canada retains the right under the GATT to grant any other manufacturer auto pact status if they meet the Canadian requirements. So while the free trade agreement says that no one else can join, if Canada does not request a GATT waiver for the auto pact, we don't understand how Honda, if it meets the Canadian requirements, can be excluded from auto pact status.

The Canadian value-added requirements are recognized as being in force but not having any effect at this time. This was the best opportunity to address these Canadian safeguards. By not doing so, the administration clearly demonstrated that a bad agreement was better than no agreement.

The administration feels it has resolved the duty-remission problem. While they have solved a portion of the problem, a significant part still remains. This reflects a basic ignorance on the part of the administration as to how business is transacted in the auto industry.

By allowing production-based and third-county export remissions to continue for 8 to 10 more years, the administration is giving Canadian suppliers a 9-percent-a-year cost advantage over their U.S. competitors. In an industry known for razor-thin margins, this is likely to put our producers at an insurmountable disadvantage.

To make matters worse, even when the duty-remission plan expires, its effect will linger on for years to come. The Japanese auto companies are not likely to change their sources of supply after the duty-remission program is eliminated, nor are companies which built plants in Canada because of the duty remissions likely to shut them down after the remissions expire.

Duties on finished vehicles and parts will be phased out over 10 years, the longest period available under the free trade agreement. Because of the peculiarities of the auto pact, cars and parts produced in Canada can now be shipped to the United States duty-free. Cars and parts produced in the United States by manufacturers other than the big 3 will have to wait 10 years to get duty-free treatment when shipped to Canada.

We believe that the new 50 percent rule-of-origin requirement is too low. At that level a car can be assembled in the United States or Canada with imported engines, transmissions, and brake systems, and still be eligible for duty-free treatment.

The administration made a big deal over the fact that profits are not included in determining North American value added. What they failed to mention is that royalty and other licensing fees are included.

Therefore, a company such as Toyota Japan could charge Toyota America or Toyota Canada a stiff royalty for their design and manufacturing technology. And this royalty, which is only a paper transaction, benefitting the parent in Japan, would count as North American value added.

The rules on direct costs of processing can be used to circumvent our own tariff structure or those temporary relief measures we put in place to assist some of our troubled industries.

While it is not probable, it is entirely possible that under the FTA, you can assemble a car with little or no American steel, copper or aluminum, and still that car could be classified as having 100 percent North American content.

For example, if a company in Canada imports its steel from Korea, and through a stamping operation, makes bumpers, fenders, hoods and other body components, those products are considered Canadian products, even if they contain less than 50 percent North American value added.

This product is shipped to the car assembly plant as a 100 percent North American part.

The same thing can be done with other parts as well, thus making the 50 percent number much lower than it appears.

One of the most troubling aspects of the negotiation process was the administration's willingness to accept the Canadian contention that most auto issues were nonnegotiable. This sent a clear signal to our other trading partners that performance requirements in the auto sector are okay.

Mexico, Korea, and Brazil are unlikely to take us seriously if we allow a developed country such as Canada to continue to maintain for 10 years policies which our administration has admitted to be GATT illegal.

How can we resolve these problems? The administration can take specific steps to ensure our concerns are adequately addressed.

The administration must clearly state that it would withdraw from the auto pact if any new members, including joint ventures, are given pact status.

The FTA calls for the formation of a panel to review the state of the North American auto industry. Some of the representatives that the administration appoints to this panel should be from auto parts companies that only have U.S. operations.

Mr. Beckman from the UAW referred to the fact that our industry is becoming a lot more multinational. He is correct, but there are still hundreds if not thousands of suppliers in the United States that only have plants in the United States.

They're not wealthy enough to have lobbying operations in Washington, but their voice should be heard.

Most important of all of our recommendations, if we or any other affected party chooses to file a 301 case against the Canadian duty remission program, then the administration should take this case to the GATT, and let the GATT decide what is legal and what is illegal under international trade law.

In summary, I would like to say that we want a free trade agreement that eliminates protectionism. Unfortunately, with respect to trade in autos and auto parts, the one before us leaves us far short of that goal.

Thank you.

[The statement of Marc Santucci follows:]

STATEMENT OF MARC SANTUCCI, ADVISER TO THE GOVERNOR OF MICHIGAN

Thank you, Mr. Chairman, for the opportunity to testify on the provisions of the U.S.-Canada Free Trade Agreement (FTA) governing trade in automotive products. Governor Blanchard sends his best wishes, and regrets that he could not be here today.

The Reagan Administration began the trade negotiations with the goal of producing a free trade agreement. Unfortunately, the result is an agreement that, at least in the automotive sector, does not live up to its name.

For 23 years automotive trade has been governed by the U.S.-Canada Automotive Agreement (Auto Pact) which, contrary to popular belief, is not a bilateral free trade agreement. Rather, it has distorted trade and investment to the benefit of Canada. Subsequent Canadian government policies -- specifically the automotive duty remission programs -- continue this distortion.

The reality of this distortion has become clear. Honda, Toyota, CAMI (GM-Suzuki), and Hyundai are in production or have under construction new vehicle manufacturing facilities in Canada. In a market 1/10th the size of the U.S., Canada is expected to be producing 500,000 additional vehicles by 1990, or approximately 22 percent of the estimated 2.3 million vehicles to be produced in North America by third-country manufacturers at that time. Most of the Canadian-built vehicles will be exported to the U.S.

During the long negotiations, the State of Michigan worked to focus the Administration's attention on these problems. It was our desire to secure changes that would provide for truly free trade in the automotive sector -- and make reality conform to the popular perception.

The results in the automotive sector were deeply disappointing to the State of Michigan. Given the existing skewing of benefits to Canada, the improvements that have been made have come off a very low base.

GENERAL COMMENTS

Notwithstanding problems in the automotive sector, the State of Michigan is otherwise likely to derive some benefit from the FTA. The five-year phase out of Canada's high tariff on institutional furniture will help an important Michigan industry. Improved access to lower cost Canadian electrical power could improve the competitiveness of Michigan's manufacturing base. The City of Detroit, located at the western end of the populous, industrial Canadian corridor running from

Montreal to Windsor, is well positioned to become a major point of service activity that would accompany the projected increase in two-way trade.

While important, these benefits cannot compare to the magnitude of trade in automotive products. In 1986, Michigan and Ontario alone traded over half of the $46 billion in U.S.-Canada automotive trade. Overall, automotive trade constitutes more than 35 percent of total U.S.-Canada trade.

Despite the significance of this trade, it is my view that the Reagan Administration sacrificed a critical opportunity to make significant changes in the terms of automotive trade to its imperative of "getting an agreement." The resulting provisions governing automotive trade reflect a total lack of commitment to make meaningful changes. By way of example, the U.S. allowed Canada to keep practices detrimental to U.S.-based parts suppliers for up to 10 more years, even though the Administration had previously determined the practices to be GATT-illegal.

The automotive trade provisions further reflect a disturbing lack of understanding of the operation and economics of the automotive sector. The Administration declares victory by pointing to practices eliminated or modified, and yet the economic benefits of these actions will not be felt for many years, and we believe, are offset by other changes, or by an absence of change.

AUTOMOTIVE TRADE PROVISIONS

In general, the FTA made a few positive changes in the current rules governing trade in automotive products. But, unfortunately, these benefits are offset by major shortcomings in practical economic terms.

Accompanying my statement is a "side-by-side" prepared by the Michigan Department of Commerce. It compares the current rules of automotive trade with the provisions of the FTA.

Auto Pact -- The FTA prevents the Auto Pact from being applied to any major motor vehicle manufacturer other than Chrysler, Ford, and GM, and possibly by 1989, CAMI, the GM-Suzuki joint venture.

Under the Auto Pact, vehicle manufacturers in Canada meeting the Auto Pact's "safeguards" -- requirements to produce as many vehicles as are sold in Canada and to achieve a high level of Canadian value added -- are "qualified" to import motor vehicles and parts into Canada duty-free from any country, including the U.S. Vehicle manufacturers with facilities only in the U.S. are unable to export vehicles to Canada duty-free.

By limiting the Auto Pact only to named manufacturers, the FTA will open the Canadian market for vehicles produced by Japanese-owned manufacturers in the U.S., once the Canadian tariffs are phased out. Moreover, the Auto Pact will no longer be an incentive for certain manufacturers to locate in Canada to serve both the U.S. and Canada on a duty-free basis.

Despite this change, U.S. negotiators were unable to modify in any way the "safeguards" which protect existing Canadian production. The safeguards will continue to affect investment for manufacturers still subject to their terms. During model year 1973-75, Chrysler failed to meet its production safeguard and was required to establish new facilities for the production of trucks in Canada. In 1980, both Chrysler and Ford failed to meet the Auto Pact's safeguards and rather than pay duties on their imports into Canada, undertook additional investments in Canada.

In addition, the safeguards will apply to future joint ventures if the majority partner (51 percent or more) is a qualified manufacturer operating under the Auto Pact in Canada.

Moreover, the Auto Pact provides no preference for U.S.-built parts over third-country parts when imported by qualified manufacturers. Vehicle manufacturers operating under the Auto Pact in Canada are indifferent with respect to the purchase of U.S. built parts or parts from third countries. Once a manufacturer satisfies the safeguards, it can import duty-free from any country.

Tariffs -- The FTA phases-out Canadian duties on new vehicles and parts from the U.S. ratable over 10 years beginning January 1, 1989. Overtime, this will assist manufacturers such as Mazda export U.S.-built vehicles to Canada duty-free. It will also help U.S.-based parts suppliers sell to the newly established Japanese and Korean owned manufacturers based in Canada.

Nevertheless, the 10-year tariff phase-out is the longest possible under the FTA. During this period, while all Canadian-built vehicles and parts are eligible to enter the U.S. duty-free, U.S.-built parts purchased by foreign-owned manufacturers in Canada, and vehicles built in the U.S. by foreign-owned manufacturers, will face Canadian duties. In the longer term, the benefits of the 0 tariff will be offset by the lingering effects of the Canadian duty remission program.

Rule of Origin -- The FTA imposes a tougher new Rule of Origin for duty-free entry into the U.S. for all Canadian built vehicle and parts. The Rule of Origin states that at least 50 percent of the total direct costs of manufacturing a vehicle, engine and transmission, be of U.S. and/or Canadian origin.

The new Rule of Origin, while tougher, is too low. It does not provide enough incentive for vehicle manufacturers to source the engine and transmission in the U.S. or Canada. Increasing the Rule of Origin to 60 percent would partially address this concern and be in the mutual interest of parts suppliers in both countries.

The engine and transmission represent approximately 30 percent of the total manufacturing costs of a vehicle. As a result: vehicle manufacturers in Canada, specifically those operating under the Auto pact, will be able to import duty-free engines and transmissions having an origin other than U.S. and/or Canadian, assemble these components in vehicles in Canada, and qualify such vehicles for duty-free treatment when entering the U.S.

But the problems of the Rule of Origin go beyond the manufacturer's sourcing of the engine and transmission. Not all automotive parts are subject to the 50 percent requirement. The reality is that the 50 percent Rule of Origin could be much less.

The Rule of Origin makes it possible for certain automotive parts to be determined of Canadian origin, even though all the steel, aluminum, plastic, or other materials used in the part are imported from third countries, and the amount of processing in Canada equals less than 50 percent. For those parts, Canadian origin is conferred when a change in tariff classification takes place. When exported to the U.S., it would enter duty-free.

In addition, inclusion of such parts in vehicles built in Canada would allow the manufacturer to count that part as entirely of Canadian origin for purposes of determining whether the vehicle is eligible for duty-free treatment when exported to the U.S. This would also be the case for subcomponents of engines and transmissions, which of themselves must also meet the 50 percent Rule of Origin.

Duty Remission -- The FTA ends Canada's "export-based" duty remission program effective January 1, 1989, **for exports to the U.S.** Under this program, Canada grants certain motor vehicle manufacturers (but not those operating under the Auto Pact) that purchase Canadian-built parts for export to the U.S. a reduced duty on imports into Canada of completed vehicles. Ending this program will eliminate subsidized exports of Canadian-built parts to the U.S.

While the export-based duty remission program was terminated immediately for exports to the U.S., it is continued through January 1, 1998, **for exports to third countries.** This will allow subsidized Canadian exports to third countries, primarily Japan and Korea, in direct competition with U.S.-built parts which do not benefit from similar subsidies. This action has probably negated whatever gains may have been made during the recent MOSS negotiations on automotive parts between the U.S. and Japan.

Moreover, the FTA allows Canada to continue its "production-based" duty remission program through 1995 for certain foreign-owned manufacturers in Canada named in the FTA. Under this program, Canada grants a reduced duty on vehicles and parts imported into Canada by a vehicle manufacturer provided that manufacturer increases over time the amount of Canadian value added in its assembly operations in Canada. This program discriminates against the purchase of U.S.-built parts, and distorts parts supplier investment to Canada during the critical period that eligible foreign owned manufacturers are establishing sourcing patterns for their Canadian assembly operations.

The fact that the duty remission programs were retained for up to 10 more years has troubling economic and legal aspects for the State of Michigan. From an economic standpoint, the duty remission programs, particularly the production-based program, distorts trade and investment to the benefit of Canada, and these effects will linger long after the program has been terminated.

Manufacturers eligible for the program will seek parts from Canadian-based suppliers in order to qualify for reduced duties on vehicles and other parts imported into Canada. Once supply contracts enter into force, Canadian-based suppliers can expect a long-term relationship with the manufacturers. In addition, parts suppliers from the U.S. and Japan will face strong pressure to locate in Canada since manufacturers will want to purchase parts from a Canadian-based operation in order to qualify for a reduce duty on imports. These investments are unlikely to be abandoned once the duty remission program ends.

From a legal standpoint, the duty remission programs appear to violate GATT. In September 1985, Governor Blanchard wrote Ambassador Yeutter asking for an analysis of the legal status of the export based program under GATT. A subsequent legal analysis, secured with the help of Rep. John Dingell and Senator Carl Levin, stated:

> "Since duty remission benefits are directly tied to the amount of Canadian value added contained in auto parts exported by the beneficiary company, duty remission appears to be an export subsidy inconsistent with Article 9 of the GATT Subsidies Code."

Ambassador Yeutter also stated that he would seek elimination of the program during the negotiations.

In November 1987, Governor Blanchard again wrote Ambassador Yeutter when it was revealed that the production-based program was to be retained for a number of years. The Governor made this request pursuant to section 305 of the Trade Act, in order to obtain information about the program not available within the U.S. government. Nevertheless, the U.S. agreed in the FTA to honor the Canadian government "contracts" with foreign-owned manufacturers sight unseen. To date, the Canadian government has refused to provide those "contracts" to the U.S. government, or a nonproprietary summary of their content.

It is my belief that the production-based duty remission program contains requirements to purchase products of Canadian origin and would be illegal under Article III (National Treatment) of the GATT.

CANADIAN DUTY SUSPENSION POLICY

The use of duty suspension by Canada is a troublesome problem that was not addressed during the negotiations.

Unlike the EEC, the U.S. and Canada have agreed to establish a "free trade area" rather than a common market. The distinction is critical. Under a common market, the governments agree to equalize their external duties with third-countries, while under a free trade area the governments are able to unilaterally adjust their external duties.

This has been the situation in the automotive sector during the past 23 years. The effect of Canada's ability to adjust external duties on the U.S. automotive sector has been to attract investment from the U.S. and undermine U.S. trade policy.

The problems that occur are the result of several factors. The U.S. government has used temporary relief measures, such as quotas or high tariffs, to assist its domestic steel industry. The Canadian government has used its privileged access to the U.S. automotive products market to the disadvantage of the very industry the U.S. is attempting to assist.

Where a U.S.-based parts supplier uses imported steel, Canada will agree to suspend its duty on that imported steel if the supplier locates in Canada. Because Canada's steel industry is not as diverse as the U.S. industry, it would not be affected when duties are suspended on the imported steel.

The result: many U.S. parts suppliers have moved to Canada where they import the same steel products from third countries (e.g., Japan, Germany, etc.) into Canada duty-free. Once that steel is processed into an automotive part, it may enter the U.S. duty-free. The U.S. loses jobs, investment, and local tax revenues; the parts are still sold in the U.S., but at a competitive advantage.

This scenario would not change appreciably even in the absence of import quotas. The ability to avoid U.S. duties alone would be sufficient incentive to locate in Canada.

During the past few years, the Michigan Department of Commerce has learned of several companies that have moved or are contemplating locating in Canada. The most serious one involved a growing automotive parts supplier who received a large contract to begin supplying a major U.S. vehicle manufacturer during 1988. Approximately 50 percent of the supplier's steel was of U.S. origin; the other steel used was imported because it was proprietary. A comparable steel product was not made in the U.S.

Canada agreed to suspend its duty on the imported steel if the supplier located its operation in Canada. A decision by the supplier is pending. If the supplier does relocate, Michigan will lose the new jobs and investment necessary to satisfy the contract, and the U.S. steel industry will lose sales, since the supplier is expected to shift its U.S. purchases to Canadian steel producers.

The FTA did not address this issue. The FTA only requires Canada, if it decides to suspend a duty on imported products, to suspend the duty for all importers of the product, rather than on a case-by-case basis. Moreover, Canada is not obligated to consider whether a U.S. product exists when determining whether to suspend its duty on a similar third-country product. The effect is that U.S. manufacturers have no preference when exporting the U.S. product to Canada.

These problems are likely to grow under the FTA. Where the U.S. decides to assist, for example, the machine tool industry, computer chip manufacturers, and others, Canada could eliminate duties on similar third-country products as a way of attracting users of these products to Canada.

To be sure, the new Rule of Origin will ensure that some processing is undertaken in Canada to transform the imported third-country product into a new article eligible to enter the U.S. duty-free under the FTA. However, the Rule of Origin only addresses the "trade effect." It does not address the "investment effect" -- that is, the use of Canadian duty suspension on third-country products to attract investment and jobs from the U.S.

CONCLUSION

In conclusion, the State of Michigan's criticisms of the FTA go to a number of the changes that were made, and the failure to make others. The U.S. has lived with "free trade" in the automotive sector with Canada for 23 years, and the "benefits" of the Auto Pact have jaded us to the alleged benefits of the FTA for automotive trade. Our concern is that many of the proclaimed benefits will be limited, or of no benefit at all, or otherwise offset by Canadian practices as yet not addressed.

The problems in the automotive sector require immediate action by the Administration in the context of implementing legislation for the FTA or by some other means. Specifically,

-- The Administration should vigorously pursue our rights in the GATT should Michigan or any other affected party choose to file a 301 case against the illegal Canadian duty remission programs in the automotive sector.

-- The Administration should use every available means to engage the Canadian government in a reconsideration of the adequacy of the Rule of Origin, focusing on its operation and the percentage.

-- The Administration should forcefully state that it will withdraw from the Auto Pact if any new motor vehicle manufacturers -- specifically future joint ventures -- qualify for Auto Pact status in Canada.

-- The Administration must develop options to respond to the investment distorting effects of the Canadian duty suspension policy.

2/1/88

SIDE-BY-SIDE ON THE TERMS AND CONDITIONS AFFECTING U.S.-CANADA AUTOMOTIVE TRADE PRIOR TO AND UNDER THE FREE TRADE AGREEMENT

PROVISION	PRIOR TO FTA	FTA	COMMENTS/ANALYSIS
I. DUTY REMISSION PROGRAM			
a) Export-based	Canada gives foreign-owned vehicle manufacturers that purchase Canadian parts for export a remission (rebate) of duties on vehicles the manufacturers import into Canada.	Canada agreed to terminate this program as of January 1, 1989, only for exports to the U.S.	In 1986, USTR determined this program was a GATT-illegal export subsidy. Termination of the program removes the subsidy prompting foreign-owned vehicle manufacturers in the U.S. to purchase Canadian-built parts over U.S.-built parts in order to obtain a remission of duties on vehicles the manufacturers import into Canada. However, remissions will be available for foreign-owned vehicle manufacturers in Canada purchasing Canadian-built parts for export to countries other than the U.S., thereby placing U.S.-built parts at a competitive disadvantage in those countries.
b) Production-based	Canada gives foreign-owned vehicle manufacturers that purchase Canadian-built parts for use in their Canadian assembly operations a remission (rebate) of duties on vehicles and parts the manufacturers import into Canada.	Canada is allowed to continue this program through December 31, 1995. The program cannot be expanded or enhanced during this period, or renewed.	Honda, Hyundai, Toyota and GM-Suzuki in Canada are eligible for duty remissions under this program. It discriminates against U.S.-based parts suppliers; purchases of U.S.-built parts will not qualify these manufacturers for duty remissions on vehicles and parts they import into Canada. It distorts investment; U.S. and foreign-owned parts suppliers will be encouraged to locate in Canada to help these manufacturers qualify for remissions. The result: once long-term supply contracts with foreign-owned manufacturers enter into force and investments are made, termination of this program will not create new opportunities for U.S.-based parts suppliers.

II. AUTO PACT	All motor vehicle manufacturers in Canada may qualify.	Only motor vehicle manufacturers in Canada currently qualified, and possibly one additional major vehicle manufacturer, can operate under the Auto Pact.	Only the Canadian subsidiaries of Chrysler, Ford and GM (and certain truck manufacturers) are currently qualified. The GM-Suzuki joint venture could become qualified by the close of Model Year 1989. No other vehicle manufacturer can become qualified under the Auto Pact.
a) Production-to Sales Ratio	Each vehicle manufacturer in Canada must assemble one vehicle in Canada for every vehicle sold in Canada.	Unchanged	These requirements protect Canada against increased imports of vehicles and parts by the vehicle manufacturer's Canadian subsidiaries. The production-to-sales and Canadian value-added requirements ensure that vehicle production 1) in units, will not fall below the number of vehicles sold in Canada, and 2) in value, will be not less than 60 percent of value of vehicles sold in Canada The U.S. has no similar requirements protecting U.S. production. Moreover, Canada gives no preference to U.S.-built parts over third-country parts that are imported by the manufacturer's Canadian subsidiaries. Foreign-owned vehicle manufacturers in Canada will not be subject to these requirements. This places U.S.-based parts suppliers on an equal footing with Canadian-based suppliers in selling to the foreign-owned vehicle manufacturers in Canada. Nor will foreign-owned vehicle manufacturers be eligible for mulitilateral sourcing. This removes the incentive for new foreign-owned vehicle manufacturers to locate in Canada.
b) 60 percent Canadian value-added	The value of each vehicle manufacturer's production and parts purchases in Canada must equal 60 percent of the value of the manufacturer's vehicle sales in Canada.	Unchanged	
c) Mulitilateral Sourcing of Parts and Vehicles	Vehicle manufacturers in Canada meeting a) and b) above are "qualified" to import vehicles and original equipment parts into Canada duty-free from any country, including the U.S.	Unchanged	

III. TARIFFS	Canada imposes a 9.2 percent (1987) duty on new motor vehicles and 8% (1987) duty on most original equipment parts imported by vehicle manufacturers that are not "qualified" under the Auto Pact. Canada imposes an 8% duty on most replacement parts. The U.S. imposes no duty on new vehicles and original equipment parts from Canada if those articles meet the Standard of Preference (see IV. below). The U.S. imposes a 3.1% duty on replacement parts.	Canada agreed to phase-out duties on new vehicles and parts from the U.S. ratably over 10 years beginning January 1, 1989. The U.S. and and Canada agreed to phase-out duties on replacement parts ratably over 5 years.	"Qualified" vehicle manufacturers in Canada can continue to import vehicles and parts into Canada duty-free. Foreign-owned vehicle manufacturers in the U.S. cannot export to Canada duty-free. After 1998, foreign-owned manufacturers in the U.S. will be able to export vehicles to to Canada duty-free -- a situation that exists presently for all vehicles exported to the U.S. from Canada. The extended phase-out provides continued protection to the Canadian market, and enhances Canada's ability, by comparison with the U.S., to attract new investment during this period.
IV. STANDARD OF PREFERENCE	Canada does not use a Standard of Preference. Only "qualified" vehicle manuacturers in Canada are able to import vehicles and parts into Canada duty-free. The U.S. allows a motor vehicle or part built in Canada to enter the U.S. duty-free provided that at least 50% of the appraised value of the vehicle or part is of North American (U.S.-Canada) origin.	For U.S.-built vehicles and parts imported into Canada by "qualified" manufacturers, duty-free entry remains unchanged. For vehicles built in the U.S. by foreign-owned manufacturers and exported to Canada, and all U.S.-built parts for foreign-owned manufacturers in Canada, the standard is 50% "direct cost of manufacturing." For Canadian-built vehicles exported to the U.S. by "qualified" vehicle manufacturers and foreign-owned manufacturers, the standard is 50% "direct cost of manufacturing." For Canadian-built parts exported to U.S. vehicle manufacturers whose subsidiaries are "qualified" in Canada and foreign-owned vehicle manufacturers in the U.S., the standard is 50% "direct cost of manufacturing."	The 50% North American direct cost of manufacturing standard creates an incentive for foreign-owned vehicle manufacturers in the U.S. and Canada, and "qualified" manufacturers in Canada, to purchase U.S. and Canadian-built parts in order for vehicles built by all manufacturers in Canada to enter the U.S. duty-free, and for vehicles built by foreign-owned manufacturers in the U.S. to enter Canada at a reduced (or 0 after 1998) duty (see III. above). However, the 50% standard does not provide enough incentive for vehicle manufacturers to purchase the engine and drive train, and a large portion of the other major components, in North America.

V. FOREIGN TRADE ZONE/INWARD PROCESSING PROGRAM	Foreign parts may be imported into a U.S. Foreign Trade Zone duty-free, assembled in a vehicle and, upon entering the "customs territory" of the U.S., a 2.5% duty is imposed. No U.S. duty is imposed if vehicles are exported to Canada. The Canadian Inward Processing Program is substantially similar to the Foregin Trade Zone Program.	All vehicles "exported" from a Foreign Trade Zone will pay the U.S. duty, including those exported to Canada, after 1993. Canada will impose a duty on all vehicles "exported" under the Inward Processing Program, including vehicles exported to the U.S., after 1993.	Canada claimed that Foreign Trade Zones were a subsidy for the export of foreign parts to Canada. This approach removes the subsidy aspect and allows both the U.S. and Canada to collect duties when all vehicles are exported from Zones or Inward Processing locations.
VI. DUTY DRAWBACK	Duty drawback permits the rebate of duties paid on imported components when products containing those components are exported. Both the U.S. and Canada use duty drawback programs.	Duty drawback is eliminated after 1993 for products exported to the other country.	The continuation of duty drawback through 1993 will encourage foreign-owned vehicle manufacturers in Canada to import third-country parts for assembly into vehicles that are exported to the U.S. duty-free in order to receive the drawback. All manufacturers in the U.S. assembling vehicles containing foreign parts would receive a duty drawback through 1993 when those vehicles are exported to Canada. However, Canadian duties would still be assessed during this period only on vehicles assembled in the U.S. by foreign-owned manufacturers.

VII. MISCELLANEOUS

a) "Used Car" Embargo	Canada prohibits the importation of most used motor vehicles. The U.S. has no similar prohibition.	Canada agreed to phase-out the prohibition over 4 years, according to the following schedule: in 1989, vehicles produced in Model Year (MY) 1981 and before; 1990, MY 1984 and before; 1991, MY 1987 and before; 1992, MY 1990 and before; and, 1993, MY 1993 and before.	Used vehicles exported to Canada would still be assessed duties as negotiated under the agreement.
b) Blue Ribbon Panel	No provision.	The U.S. and Canada agreed to establish this Panel to assess the state of the North American industry and to propose public policy measures and private initiatives to improve its competitiveness in domestic and foreign markets.	No beginning or ending date for the deliberations of the Panel were established.
c) Cooperation in Multilateral Round	No provision.	The U.S. and Canada agreed to cooperate in the Uruguay Round of multilateral trade negotiations to create new export opportunities for North American automotive products.	

Prepared by the Michigan Department of Commerce

Chairman GIBBONS. Mr. Vander Jagt.

Mr. VANDER JAGT. Thank you, Mr. Chairman.

Mr. Santucci, I thank you for your very complimentary words about this committee, and the very able staff of this committee.

Since you are from the State of Michigan, my colleague from Michigan and I would expect you to have such wise perception and gracious expression of those perceptions.

You have given us a statement that indicates there are some good things about the agreement, and some bad things about it, particularly as it impacts the auto industry, and some ideas of how it could be improved.

And some of those ideas I personally think are excellent. But assuming we cannot improve it, assuming it comes before us just as it is, would you recommend a yes vote or a no vote?

Mr. SANTUCCI. We would like to see the free trade agreement. For example, in western Michigan near your district the furniture industry will benefit. The phaseout of tariff takes place over 5 years. This is much better than in autos where the phaseout takes place over 10 years.

We realize it would be very difficult to change the agreement at this time. What we would like to see, in conjunction with supporting the agreement, is for the administration to recognize that actions need to be taken outside the context of the agreement.

If we felt that we could get a promise from the administration to take those actions, then I think we would support the agreement.

But at this time we could not support the agreement, if the administration would not agree to take certain actions.

Mr. VANDER JAGT. That's a very interesting answer. And I do not know the answer to the next question I am going to ask, so I am not laying a trap.

But the Governors were in town last week, and they voted to endorse the agreement. Do you know how our Governor voted on that resolution?

Mr. SANTUCCI. Yes, I do, and I would like to give you a brief explanation. The Governor was one of the five who voted no. He wasn't voting no to a free trade agreement with Canada.

He was saying that at this point he is withholding his support for the agreement because he has concerns in some areas that can be addressed both within and outside the context of the agreement.

He did not make any statement for or against the agreement. We did not lobby other Governors for or against the agreement.

It was simply a statement saying that at this point in time we have some problems which need to be addressed.

Mr. VANDER JAGT. Which was perfectly consistent with the answer you gave to my first question. Thank you.

Mr. Beckman, you have told us a lot of your concerns with the agreement, and I just want to be clear. You told us things it does do that it shouldn't do, and that it does not do that it should do, and how far short it fell from what should have been achieved.

Is it your position that this agreement would leave the U.S. auto industry worse off than current law?

Mr. BECKMAN. No. The problem with the agreement is that it does not deal with the problems that face the auto industry today.

There was an opportunity that was presented by these negotiations to resolve those problems, or at least to take some steps in the direction of resolving them.

What happened, though, is that those problems remained almost exactly as they were, and we have really used up the last opportunity that I see for the next several years to have a reasonable discussion with Canada about these issues where we have some leverage to get a common position between the United States and the Canadian Government that would benefit the North American auto industry.

Mr. VANDER JAGT. So your disappointment goes largely to missed opportunities, not to making current law worse.

All right, would there be an opportunity if this agreement went through as is, and Steve Beckman were appointed the chief ambassador to enforce and implement it, with that kind of great leadership, would we see improvement over current law, even with this agreement?

Mr. BECKMAN. With this agreement as the basis for trade with Canada, and especially within the auto industry, I don't see that there is really the opportunity to solve the problems.

Specifically with the auto industry, as Mark Santucci mentioned, they basically stonewalled all the important issues, and they said, these are nonnegotiable, and we didn't reject that position, and that has put is in a very difficult situation.

Mr. VANDER JAGT. Okay, thank you very much. And I thank all the members of the panel.

Chairman GIBBONS. Mr. Frenzel?

Mr. FRENZEL. Thank you, Mr. Chairman. I would like to ask Mr. Santucci one more time the same question that Mr. Vander Jagt asked him, and that is, what do you suggest we do to make things right by your standard?

Mr. SANTUCCI. Well, there are two key issues that have to be addressed.

One is the rule of origin. Most of the auto industry in Canada, and most definitely the auto parts industry in Canada, are asking for a 60-percent rule of origin.

You have the auto parts industry in the United States asking for, and the auto manufacturers in the United States saying they could go along with, a 60-percent rule of origin.

Somehow, some way, that issue has got to be addressed. The U.S. Government consistently went back to Canada and said, your people would like to see it; we would like to see it. And the Canadians consistently said no.

I think it has got to be made clear to them that that is an important issue to us.

Second, outside the context of the agreement, as far as I know, we've been told time and time again, we have not given up any of our GATT rights by signing this agreement. Governor Blanchard was told over a year ago by Ambassador Yeutter that the duty remission program was illegal under the GATT, and he couldn't understand why the Canadians would institute such a program.

We at that point in time said we were thinking about filing a 301 action. Ambassador Yeutter asked us not to because he did not want to jeopardize those negotiations. He stated that he would take care of it in the context of the free trade negotiations.

We agreed to disagree, but we also agreed not to take any actions at that time which would jeopardize the negotiations.

This issue has got to be addressed. It does not have to be addressed as part of the free trade agreement. But the United States should stand up for what it believes its rights are under the GATT. When there is a GATT-illegal practice, it should not let the politics of the free trade agreement interfere with that.

Mr. FRENZEL. Thank you. It is worth noting, I think, that in addition to your Governor, the premier to your north, Mr. Peterson, also does not like the plan.

It is worth noting that in addition to the union objections in the United States, Canadian unions don't like it, either.

Are you telling us that this one single agreement could be bad for both sides?

Mr. SANTUCCI. Yes. And there are reasons for it. The reason the Canadian autoworkers don't like it is because up until this point in time, they were pretty much excluded from the changes that were taking place in the North American auto industry.

If you look at the plant closings, most if not all of the plant closings that took place in North America were in the United States. In Michigan alone, five plants have been closed in the past year.

The Canadians, because of the safeguards, were excluded from that.

The free trade agreement, over time, will take away some of those protections. It will make the Canadian autoworkers compete on an economic basis, just as their brother workers in the United States do. They don't like that.

Premier Peterson would have liked to have seen the auto pact's safeguards extended to the Japanese manufacturers in order that the benefits Ontario now enjoys with the United States, with the big three, are continued.

Those benefits have not been extended. That is a plus for us, for our side. That is why they are opposed to the agreement.

They would like to see the auto pact's safeguards extended to all manufacturers.

On our part, we are upset because we would have liked to see all of the safeguards eliminated. So it is possible for all the sides to be upset on a related subject but for different reasons.

Mr. FRENZEL. I see. But do you agree it is difficult to disadvantage both sides in practice? It is easy to not reach the anticipated goals of both sides. Is it likely that both sides are going to lose employment as a result of the agreement?

Mr. SANTUCCI. No, I think what's going to happen is that the Canadian side won't gain as much employment as they otherwise would, and we won't lose as much as we otherwise would.

So I think there is still a net plus for Canada, but not nearly as large as it would have been if the agreement turned out a different way.

But I think it is also important to point out, if we did not have these negotiations, or if there was no agreement, I think there would be no question but the administration would take action against the Canadian duty remission program.

That in itself would have had a more positive effect on U.S. employment than the provisions of the agreement related to automotive trade.

Mr. **Frenzel**. Thank you.

Mr. Chairman, I have no further questions unless one of the union representatives wants to comment on that other statement.

Mr. **Beckman**. Thank you, I appreciate your giving me the time to.

On the Canadian side, there are other issues that have prompted opposition, not just those related directly to the auto industry. And the Canadian autoworkers have been actively concerned, and expressed their concerns, with those particular issues.

But I think with respect to this issue, it is possible for both sides to suffer disadvantages because of the failure to deal with third country imports in this industry.

The continuing growth of imported parts and imported vehicles is the most significant threat to employment in the United States and in Canada in the auto industry. And there is nothing in this agreement's auto provisions that are going to restrict, or to improve the competitiveness, or the competitive situation, of the United States and Canadian industry, relative to imports of components and vehicles.

And that was the opportunity that these negotiations presented, and it was an opportunity that we feel was missed.

Mr. **Frenzel**. Well, sure, but that didn't disadvantage you. It didn't give you some advantages that you wanted, on both sides.

Mr. **Beckman**. It did not address a problem that will be growing in the next couple of years in a way that we think is bad for both the United States and Canada.

And given that the agreement was relatively comprehensive, it seems to me that it precludes the opportunity to discuss these issues in the future bilaterally in a way that would achieve the results that we're interested in achieving.

Chairman **Gibbons**. Would the gentleman yield?

Mr. **Frenzel**. I yield to the chairman.

Chairman **Gibbons**. It sounds to me like what the panel is saying, the majority of the panel is saying, we wanted a domestic content agreement a few years ago. We didn't get it. And therefore we're mad at this agreement because it didn't give us a domestic content agreement.

Isn't that what you're saying when you translate all this into English?

Mr. **Santucci**. Mr. Chairman, since you addressed the whole panel, I'd like to say, "No, we never asked for domestic content."

Chairman **Gibbons**. Well, maybe you didn't. But all the unions did. They asked for a domestic content agreement. And the parts manufacturers, too. We didn't give it to them.

And now they're saying, well, we could have gotten it into this agreement on the side.

Mr. **Santucci**. No, this is a problem with the whole discussion on the rule of origin. We are not saying that you must meet 60 percent domestic content, that 60 percent of a car has to be Canadian or American.

What we are saying is that in order for a car to get duty free treatment coming into the United States—in other words, to avoid the 2.3 percent U.S. duty—you should meet a minimum requirement so it's called a North American car.

Otherwise, why have tariffs at all. Just allow the foreign cars in without paying a duty.

Chairman GIBBONS. Well, 2.3 percent is not much duty, even on an overpriced automobile. But you know, I think I understand English, and I think I know where you're coming from. I've been following this thing for a long time.

But what you're saying to me is, we're still mad we didn't get the domestic content. And what you're saying, we're going to torpedo this agreement, because in this we could have gotten a domestic content agreement, sort of sub rosa. It wouldn't look like one.

That's what you're saying. Correct me if I'm wrong.

Mr. BATES. If I could just add one thought along these lines. I think there is a difference between a rule of preference or a rule of origin, and domestic content.

I also think it's important to recognize that there are a lot of incentives out there right now which are stimulating rising levels of imports above and beyond competitive price or quality.

We're talking about the GSP program. We're talking about foreign trade zone programs. There are a lot of incentives out there which are encouraging greater use of third country components in automobiles.

This offered us an opportunity within the North American context to have an offsetting provision which in effect would provide an inducement, greater economic incentive, to make use of United States and Canadian parts, not discriminating one against the other.

We think that this would have provided a greater sense of balance in the overall environment.

Chairman GIBBONS. As I look at this agreement, you've got the highest domestic content requirement of any industry in America in this agreement. There's nobody else that gets a higher domestic content in this agreement than you all.

And what you're saying, it's tainted, and it isn't enough. Isn't that what you're saying?

Mr. SANTUCCI. What we're saying is that the Canadians have an even higher one. And if you're going to have a bilateral free trade agreement, the rules should be the same on both sides of the border.

We're saying get rid of those Canadian protectionist measures; don't add any of our own on.

Chairman GIBBONS. That's what the State of Michigan says. But I'm talking about these other gentlemen over here.

Mr. KADRICH. If I may just speak for the Automotive Parts and Accessories Association, 6 years ago we came to the Hill and throughout the entire battle over domestic content, APAA testified against it each time it was introduced. We felt it would be a market closing bill, and would do nothing to build access for U.S. auto parts exports to other markets.

We did recognize, and we shared the feeling with the union supporters of the bill and the legislative supporters that we needed to get more American parts into the cars produced by Japanese vehicle makers, be it in Japan or in the United States.

So, APAA devised a plan that would have given a duty incentive, a remission of vehicle import duty based on a firm's U.S. parts imports. We tailored it after the Canadian remission program. Both the Commerce Department and USTR said it would be GATT-illegal.

It's very unfortunate that the United States negotiators now have approved the continuation of that same program in Canada through 1998.

But we do have a very strong commitment to opening markets. And we feel that the codification, if you will, the continuation of Canadian safeguards, is going to handicap American negotiating efforts to remove other nation's barriers.

We are very pleased that the USTR trade barriers report lists performance requirements in a number of key markets that are blocking American auto parts exports. We believe that we must deal with Canada's performance requirements before we can move on to other countries.

Mr. BECKMAN. Let me address this as well. I want to thank my fellow panelists for also addressing this position.

There was nothing in the FTA that was contemplated or that was discussed that would have restricted access to the U.S. market from anywhere in the world.

The issue in the FTA is the ability to ship duty free between the United States and Canada. It has nothing to do with anything except what qualifies for the benefits of shipping duty free.

Now, presumably, those benefits should be beneficial for the North American market, and for production in Canada, and for the United States.

A bilateral free trade agreement is not intended to create benefits for other countries. The purpose is to create benefits for the two countries negotiating.

Chairman GIBBONS. You got under this agreement the highest domestic content requirement in the world—in the whole world of trade for the United States. No other product do we restrict like we do automobile parts. No other part, no other component, do we restrict like this.

Mr. BECKMAN. I'm not sure what it is we're restricting.

Chairman GIBBONS. Well, if you manufacture a widget, and it's got some Zimbabwe parts in it, we don't say it's got to be that high domestic content to get into the United States.

Mr. BECKMAN. We're not restricting access to the United States. It's a question of whether the duty is paid or not.

Chairman GIBBONS. The 2-point something percent duty; that is nothing.

Mr. BECKMAN. That is the issue here.

Mr. SANTUCCI. The 50 percent is not what others believe it is. I'll give you an example.

If you take a piece of steel that's imported from Germany, and you stamp it, the value of that stamping operation may be 10 percent of the value of the finished part.

That part is considered an American or a Canadian part as soon as it changes from steel to a fender. There is no 50 percent requirement.

You can do the same thing on most of the parts that go into cars. So the actual car may only have 10 percent North American content, as long as there is substantial transformation from one part of the tariff code to the other. That is the only test required on those parts.

Now, once you get to the finished vehicle, the finished vehicle then itself has to have 50 percent North American content, but those parts can be less than 50 percent North American content.

So your car could end up being really only 25 percent North American content, and still be considered 50 percent North American content.

Mr. BATES. I'd like to elaborate on that, because Marc, I'm not sure that I totally agree with you there.

There are certainly circumstances such as you mention where there is no rule of origin requirement that pertains to the parts themselves. But there are a number of cases, in fact, I would say the majority of cases for high value added components for major subassemblies such as engines and transmissions, and parts which are classified in the same tariff chapter along with finished motor vehicles, where the rule of origin would apply.

Chairman GIBBONS. Well, what are you all saying, then? Is it the big three's tickets to the cleaners, is that it?

Mr. BECKMAN. Yes, Mr. Chairman, if I could, I think the circumstances in the auto industry have been dominated for over 20 years by the auto pact. And the big three, when the auto pact was negotiated, were the only companies involved in producing in the North American market.

And for most of the last 20 years, that has been the case. That is no longer the case. There are other producers that have production methods that are substantially different from the big three, although the big three are learning from them.

And at the same time, the parts sourcing system has become much more international. Now, the auto pact provides a set of benefits for producing in Canada that under current circumstances are decidedly disadvantageous to the United States.

And American workers and American producers, parts producers, are suffering as a result of the conditions that Canada imposes on auto producers.

It's important to keep in mind that for the transplant operations, the Japanese companies that have located in North America, under the FTA, those plants in Canada that want to sell in the United States, sell in the United States duty free; not in 10 years, tomorrow.

Transplants that are located in the United States that want to sell in Canada not only face a 9.2 percent tariff now, but they will continue to pay that tariff until the end of the 10-year period.

Now, that's only one inequity. There are a number of inequities in the way the United States-Canada auto trade works that create an advantage for imported parts to be assembled into assembly plans in Canada and shipped to the United States to get in duty free.

Now, because of the auto pact there is a disproportionate share of assembly capacity in Canada. That means that the duty free privilege coming into the United States is that much more important because of that disproportionate capacity.

The U.S. industry suffers a number of disadvantages relative to Canada and relative to third country producers because of the way auto trade in North America has grown up over the last 10 years.

The attempt to increase the rule of origin is simply to assure that the benefits of duty free treatment—not anything else; not the ability to sell in the North American market; not qualifying as legitimate North American sales companies—the only benefit is to qualify for duty free treatment going across the border.

We want that to be more equitable, and we want North American companies, Canadian and United States companies to be the beneficiaries, not third country companies.

Mr. **Frenzel**. Mr. Chairman, may I finish?

Chairman **Gibbons**. Oh, yes, sir, I'm sorry.

Mr. **Frenzel**. I'm indebted to the witnesses for their fine response. I can't escape the same feeling the chairman has, that you went in there trying to get more. You got something. It wasn't enough. You were trying to get something you probably wouldn't get in the ordinary course of events here.

And I'm sorry for the chap from the State of Michigan who feels there are benefits elsewhere, but that Michigan cannot recommend approval of the pact.

But still, it's a little hard for our negotiators to meet everyone's fondest aspirations, particularly when they related to restrictions of our market.

I yield the balance of may time.

Chairman **Gibbons**. Mr. Levin.

Mr. **Levin**. Thank you, Mr. Chairman. I have found the back and forth illuminating, and I hope there is a way to spread this not only in the record, which happens automatically, but help others within this Congress listen in.

I have found that nothing is more beset by labels than issues of trade, and it seems to me no issue needs more reference to detail and outcome than trade. If one talks only about theory in trade, one doesn't get very far.

I have prepared an opening statement Mr. Chairman, and I wonder if I might ask permission to include it in the record, though I am not a member of the subcommittee.

Chairman **Gibbons**. Certainly. We are happy to have your views.

[The statement of Mr. Levin follows:]

OPENING STATEMENT OF HON. SANDER M. LEVIN

I very much favor more open trade.

I'd like to support this and any other agreement that opens channels for trade between countries.

The test of such an agreement must be both its objectives and its likely consequences. We have to take into account the fact that our current trade deficit with Canada in the auto sector is nearly $4 billion a year (U.S.).

A proper assessment of the agreement must include a weighing of the pluses and minuses, industry by industry, to arrive at a judgment of the agreement's overall balance. The auto sector, accounting for more than a third of our bilateral trade, obviously must weigh heavily in this balance. An official of the U.S. Trade Representatives's office indicated, at the first hearing in this series on February 9, that [illegible] had made no analysis of the likely impact of this agreement on the auto sector.

While the Commerce Department and USTR are now preparing such an impact analysis, it is incumbent on Congress to develop further evidence on the economic consequences. This hearing is an opportunity to do so, and I thank, the chairman of the Subcommittee on Trade for arranging it.

It is important to recognize that our current bilateral auto trade is skewed, to Canada's benefit, by a number of trade-distorting practices. Canada maintains substantial domestic-content requirements both under and alongside the 1965 bilateral Auto Pact. Canada also implements the Auto Pact so that vehicle manufacturers who qualify for Auto Pact status can import parts duty-free from anywhere in the world, not just from the United States. Canada also gives remissions, or rebates, of import duties for non-Auto Pact producers' vehicle imports based on their use of Canadian labor and parts and their export of Canadian-content goods to the United States and other countries.

I hope that we can discuss with the witnesses today how these specific trade distortions would be affected by the United States-Canada agreement.

What would be the effect on U.S. production and investment of leaving Canada's production-based duty remissions intact until 1996?

What would be the effect of letting Canada's export-based duty remissions survive until 1998, except as they depend on exports to the United States?

What would be the effect of continuing worldwide, duty-free sourcing to the Canadian facilities of companies qualified under the Auto Pact, including their new joint ventures with companies from third countries?

What would be the effect of adopting the "50-percent direct cost of manufacturing rule of origin" on the ability of third-country manufacturers to ship their products into the U.S. duty-free by way of Canada? How does this rule differ from the existing rule under the Auto Pact? Does it cover all the materials that go into a vehicle? What percentage of an average vehicle's components would be covered by the new 50-percent standard? Would it allow duty-free entry only if a significant portion of high-value-added components were built in the United States or Canada?

To sum up, what would be the likely impact of this agreement on production and investment in the North American auto sector over time—in the first years of implementation, after 5 years, and after 10 years?

In recent weeks, as Members of Congress have had a chance to study the agreement, there have been questions from many quarters about the agreement's likely consequences for particular industries and regions. For example, I noted that a group of Senators, mostly from the West, sent a letter to the President last week raising serious concerns about the consequences of this agreement for a number of industries, including auto-parts manufacturing.

I do not pretend to have studied all the issues they have raised, but I do think it is both constructive and necessary for Members to raise such concerns now, before the ink is dry on the legislation that would put this agreement into effect. We should not hesitate to raise these issues now, because later may be too late, and if Members of Congress do not raise them, who will?

So I hope that my colleagues and I can look closely into the consequences of this agreement for the auto sector today, as we have and will for other sectors, to see just how far the agreement goes toward achieving the objective of freer trade and fewer trade distortions—and how far it may still have to go.

Mr. LEVIN. And I would like to thank you again as I have privately for your invitation to members of the full committee who do not serve on the subcommittee to participate.

I have said earlier, and feel even more strongly, I would like to vote for this agreement. I think the more openness in trade the better. What has been discussed here is the question of the extent to which this agreement removes barriers between our two countries, and I would say to my colleagues here, this isn't theoretical.

There is an imbalance now between our two countries in the auto sector of about $4 billion. It is about a third of the imbalance between our two countries. That isn't theoretical. It is not all caused by any single factor, including the auto pact. But I haven't met anybody who doesn't think that the auto pact, the way it has worked out, is a factor in that deficit.

It has been applied on a one-sided basis. Mr. Hanna, I don't think you would state that the balance between our two countries today would be the same if there had been no auto pact, if the Canadians had not attached to the auto pact their domestic content requirements. I don't think you would take that position. I haven't met anybody who has.

I mean, they used these preferences—the reason they put them in was to work to their advantage, and it has worked. I admire them for it, if they can get away with it. It is free enterprise, not free trade. And I want to pursue that with you, Mr. Hanna, and ask people to comment on your testimony.

It seems to me the question here is what is the likely impact of this agreement on the balance of trade between our two countries and the openness of trade in the auto sector in the future? It seems to me that is the question. And other States have raised questions, those in the West, about other parts of it; and a lot of States have asked questions about the auto sector where autos and auto parts are produced, and I think it is well that we do that.

So let me, if I might, ask some specific questions of Mr. Hanna and the rest of the panel to try to figure out exactly what is likely to happen here. Exactly what is likely to happen. What, not in theory but in practice, this is likely to work out to mean.

Mr. Hanna, in your testimony you say that it takes on and resolves most of the trouble spots which were beginning to cause problems in the United States-Canadian auto trade relationship in recent years. All right. The first relates to the domestic content requirements on the Canadian side. And you say on page 3, and I would like you to comment on it, and also for the others to comment—you say, "But the difficulty in dealing objectively with safeguards," and it is interesting you use the word "safeguards," you don't use the word "barriers." I suppose because your members produce on both sides of the border. If you did not, you would call them barriers. I think they clearly are barriers. They are protectionist measures.

You say that "the difficulty in dealing objectively with safeguards is that they have become extremely significant in the national political consciousness while at the same time their operational impact has become irrelevant because the one for one is easily met and the 50 percent is now exceeded."

I wonder if you want to elaborate and whether the other members of the panel would say that the operational impact is not irrelevant. And I would like you to comment on the out-sourcing portion of the auto pact.

Mr. Hanna, if you want to comment. And then I would ask the others if they do.

Mr. **Hanna**. Yes. Thank you very much, Mr. Chairman, Mr. Levin. Just as a point, I used the term "safeguards" because that is just common jargon, not because I speak for the Canadian side or producers on that side. Whether you call them safeguards or barriers, I think they are demonstrably now irrelevant. They do not govern, by and large, investment decisions by producers on this side of the border.

The U.S. manufacturers have been for a long time far in excess of what was required by in the terms of the original agreement called safeguards. That is the terms of the agreement, not my term. Far in excess of that, so it isn't going to govern substantially investment decisions.

And I have heard here continuously this afternoon how this has worked to the disadvantage of the United States and to the advantage of Canada, and I share your skepticism of theory. Let us go to the facts. Over 90 percent of the automotive industry jobs are on the U.S. side of the border. Have been for years. Over 90 percent of the investment by U.S. manufacturers has been on the U.S. side of the border. Has been for years. So I don't see how it has skewed investment in that direction.

Now certainly back at the time when the agreement was entered into there were conditions placed by the Canadian Government outside of the pact on U.S. manufacturers, and their concern was at that time—I can't speak for them and I don't presume to. Their concern at that time was that under a true free trade agreement between the two countries that all of the production would go south of the border. So it is true that it did require production facilities north of the border.

My point is that now the companies are so far in excess of compliance with that that they do not have to be dictated by the terms of what are referred to sometimes as barriers or sometimes as safeguards. And I would repeat once again, if this has worked truly to the detriment of the U.S. side, how is it that over 90 percent of the automotive jobs in the United States and over 90 percent right today of investment by automotive, or motor truck and motorcar manufacturing companies is made on the U.S. side of the border.

Mr. LEVIN. All right. Would some of the other panelists like to comment on that? Go ahead. I mean, talk to each other. We are learning from that.

Mr. BECKMAN. Well, first of all, I am not sure where those figures come from. I certainly wouldn't agree with the jobs figure being so predominantly on the U.S. side. It is my understanding that about 85 percent rather than over 90 percent of employment is in the United States.

While sales in Canada, sales of North American-made vehicles in Canada are approximately 8 percent of the North American market and have been for a long period of time, production in Canada is twice that. It is about 16 percent of North American production. I think that is clearly attributable to the auto pact and its workings.

We are also in a situation despite the fact that the companies exceed the requirements of the safeguards, we are in a situation where capacity is being reduced by a number of companies. And the question is how far above those safeguard levels are the companies so that they will feel comfortable shutting plants in Canada? There are incentives to keep those plans open in Canada, and not the least of which is the multilateral sourcing benefit which, while some people seem to think that $300 million a year is inconsequential for the big three, I don't think you find too many other people outside the industry who think that is an inconsequential figure.

Mr. LEVIN. The duty involved—the chairman asked—what that avoids is Canadian duty of close to 10 percent.

Mr. BECKMAN. On parts imports from abroad, from non-U.S. sources into Canada.

Mr. LEVIN. Now, under the auto pact, are U.S. companies multisourcing, bringing them in duty-free and then shipping them?

Mr. BECKMAN. The big three can import parts into Canada.

Mr. LEVIN. How about the United States?

Mr. BECKMAN. They cannot bring them into the United States duty-free, no, and ship them to Canada. No. Although the foreign trade zone benefits are available for parts that are imported into the United States, assembled into vehicles and shipped to Canada, they still have to pay—they have to pay a lower duty on the parts. They have to pay the 2½ percent duty rather than the parts duty, but they do not come into the United States duty free the way they do into Canada.

Mr. LEVIN. Now what is the source of that imbalance, that difference in treatment?

Mr. BECKMAN. Well, when the auto pact was negotiated the United States went to the GATT to get an exception for this bilateral agreement and Canada just waived its duties—did not want to go to the GATT to get an exception, waived the provisions, but only for companies that meet the safeguards in Canada. So the safeguards have been the central element in auto policy, whereas we have played in the auto industry a bilateral game with Canada—a bilateral arrangement to promote North American production but have treated the rest of the world the way it is treated in other industries and used the tariff code as it was written and intended.

Mr. LEVIN. And the amount of multisourcing now is 300 million?

Mr. BECKMAN. The tariff that is not paid. The tariff that is not required to be paid because of the approximately $3 billion worth of out-sourcing——

Mr. LEVIN. $3 billion?

Mr. BECKMAN [continuing]. Is $300 million.

Mr. LEVIN. Well, why don't you go down the line and comment briefly, if you would. And, Mr. Hanna, after Mr. Santucci you will have another chance.

Yes?

Mr. BATES. Our sense is that, while the operational significance of the safeguards in Canada are certainly much reduced from what they were previously, I would not call them a nonissue at this point. Clearly to the extent that there is overcapacity in North America, to the extent that there is a dramatic decline in demand in North America, these provisions would become operational again. And so in a kind of longer term or maybe indefinite sense, it is an issue that ideally would have been addressed.

Mr. LEVIN. Mr. Kadrich.

Mr. KADRICH. Well, I would like to mention that it is the duty savings on the multilateral or the third country sourcing that is the real hook that we feel will keep the auto pact members committed to Canadian safeguards long after the tariffs are eliminated between our two countries. This point often is overlooked. When we talk about the phaseout of tariffs by 1999 and the fact that assemblers in Canada will be able to import from the United States duty-free without having to belong to the auto pact, I think we have to consider very seriously the pact benefits they would forego.

To quit their commitment to pact rules is to lose the benefit of being able to import cars and parts duty-free from the rest of the world.

I also would like to point out as far as the safeguards go that a recent report to Parliament by the automotive task force, which is made up of Canadian autoworkers and parts making and auto manufacturing representatives, called for Canadian enactment of universal auto pact. This would extend the same type of safeguards to every company selling cars in Canada that our U.S. assemblers now face. The task force projected a significant increase in Canadian parts shipment—a 45 percent increase by the end of this decade—under universal auto pact.

I think it is important to note that the report projects a Canadian advantage over the United States simply by keeping the auto pact in its current state. Of course, the task force had hoped to bring the transplants into the pact, but they clearly are handling the transplant issue through the duty remission programs.

The fact is that for many years to come these distortions are going to hurt American parts makers and their workers.

Mr. LEVIN. Mr. Santucci, and then Mr. Hanna.

Mr. SANTUCCI. The original question was with regard to the safeguards and do they have an effect, and I think the statement was made by Mr. Hanna that they have not for a long time. As I understand it, back in 1980 both Chrysler and Ford failed to meet the auto pact safeguards, and rather than pay duties on their imports into Canada they undertook additional investments in Canada to ensure that they didn't have to pay the duties on the parts they were bringing in.

And Chrysler to this day would have a problem meeting the safeguards if it was not for the purchase of American Motors giving them the two plants that American Motors had in Canada. This makes it much easier for Chrysler to meet these safeguard requirements.

Mr. LEVIN. Mr. Hanna.

Mr. HANNA. Yes, I had just a couple of observations. One of them was a question raised as to where the figures on employment came from. They came from the President's report to the Congress of August 1987 on the operation of the automotive products trade agreement, just for the record, so that we know that.

A couple of other things. One of them is we are constantly hearing this figure $300 million, and we have never been able to identify that anywhere. We cannot identify much more than half of that, and I would put that in the context of $4.5 billion worth of trade involved here.

Mr. Levin, I think you framed the question exactly right. Where do we go from here, and what does the free trade agreement do to automotive trade from here on in? If I could paraphrase that, I think you raised that question.

What it does is this. For those companies who are not members or not participants in the free trade agreement, they will over the period, the term of this agreement enter into a thing where they no longer have to pay tariffs, duties one way or another back and forth across the border, which means this. That the current participants in the Pact as this thing becomes implemented will have the option of opting out of the pact if they want to because they would not incur those tariffs, just as any other manufacturer would not do.

But just to say over the term of this agreement the incentive to continue to participate in the pact would be less, and I think that is the long-term prospect of this thing. And again, I would just reemphasize, if the United States has been hurt in this, how is it that over 90 percent of the employment is in the United States.

We have also heard, for example, that a percentage of the automobiles are assembled up there. Well, that is true relative to the population in Canada or to sales of cars in Canada, but that is only part of the equation. You must also figure in there the balance of parts, which we have heard much about, and the United States has had a huge preponderance in favor of the balance of trade in parts over the years. So that when you add them together and you aggregate this whole agreement over the past 22 years up through 1986 was a wash, which means to me it was a pretty good agreement.

Mr. LEVIN. How about the last—just so the record is clear. You combined 20 years. What has been true since 1982?

Mr. HANNA. 1982? In 1982——

Mr. LEVIN. No, since then. What has the balance been since then?

Mr. HANNA. It turned negative for the United States in 1982. It went to an extreme of $4.5 billion deficit in 1984, but that has steadily declined every since.

Mr. LEVIN. What is it now?

Mr. HANNA. 1985, 1986, 1987—1987 will probably be about $3 billion. And that is big, it surely is. But if you want to pick a 5-year window, we can go to some other 5-year window where the United States was far in excess of a break-even point.

The point is that most of this has nothing to do with the requirements of barriers or safeguards, whatever you want to do; it has to do with things like the relative level of economic activity in the two countries, exchange rate shifts, the popularity of certain kinds of automobiles being shipped back and forth, and you can't fine tune this thing so it comes out in any one year or any 5-year period.

Over the term of it, it has been unquestionably a good agreement because of the amount of trade and employment and production and sales that has increased dramatically. But again, I would agree that that is ancient history.

Mr. LEVIN. Mr. Santucci.

Mr. SANTUCCI. I have one comment that I think cuts through all of this. If that is true, if it has absolutely no impact, why was it nonnegotiable on the part of the Canadians? If these measures have no impact, why were they willing to walk away from the agreement when we even brought them up?

Mr. LEVIN. All right, let me ask two other questions. I have wondered about that, and I was involved, as all of you know, with the discussions with our U.S. Trade Representative until the very end. We worked collaboratively to try to do the best with a bad situation. I don't think privately the U.S. Trade Representative would describe the outcome on autos like you, Mr. Hanna, but so be it. They consider these barriers more than irrelevant.

And the $300 million figure I think has come from within the industry, and I will try to find our notes on that.

Let me just ask all of you quickly to comment, including Mr. Hanna, on two other aspects of his testimony. By the way, the auto pact, it has been expanded so that it includes GM and Suzuki? So we are talking about the big three plus that venture; right?

Mr. **Hanna**. Yes, sir. That is correct.

Mr. **Levin**. On page 5 of your testimony, Mr. Hanna, you say the FTA settles the duty remission issue, and then on page 6 you say, in addition, "The formula by which the figure,"—and this is the standard of preference, the rule of origin, and this is to qualify for the benefits of the Pact. "The formula by which the figure is calculated was tightened to make the standard even tougher than it had been under the auto pact." Now there has been a little back and forth on that, but I wonder if you could quickly go down the row there and comment on these two statements: one, that FTA settles the duty remission issue, and second, that the standard of preference or rule of origin is even tougher.

If you want to just start, go from right to left, if you would.

Mr. **Beckman**. I will start. The duty remission issue is really two issues. One is the export-based duty remission for companies that do not have manufacturing facilities in Canada, and the other is a production-based duty remission for companies that do have production facilities in Canada.

At the end of the agreement, at the end of 10 years the export-based duty remission will be eliminated entirely, but from the beginning of the FTA it will not apply to exports to the United States. The production-based duty remission, which is clearly more significant—the export-based duty remission, if Jaguar is shipping cars into Canada and selling a few of them and somehow manages to buy some parts from Canada and ship them to its service dealers in the United States, it would be able to reduce its duties into Canada. That is a relatively small program. It has relatively little impact on the industry.

The production-based duty remissions, though, are a much more significant factor because you do have companies that have production facilities on both sides of the border, and, if there is a production incentive in Canada, then there is going to be—more likely to be more activity in Canada than otherwise would be the case and less in the United States.

In addition, we have, you know, observed the way that the start-up operations of new plants in the United States have gone and the Japanese companies that have located in North America have brought along a whole lot of suppliers with them. They have made sourcing agreements that are not one year at a time. They make long-term agreements. So the companies that are setting up—and they all will be set up and running by the end of the year, all those who have committed to investment—will be covered by the provisions of the duty remission production-based program through 1995, and the decisions about sourcing will have been made under the conditions where they get a benefit from sourcing products in Canada.

Now that can mean sourcing from companies whose home customers have moved to Canada and set up shop there. It can mean companies that have Canadian facilities already. It can mean U.S. companies that, in order to get the business, set up a plant in Canada. Those are all incentives for Canadian production that are disadvantageous for U.S. producers.

So certainly as far as we are concerned the duty remission question is not settled. The terms under which it will disappear have been settled, but the impact is going to continue to be adverse for the U.S. economy.

On the issue of the rule of origin being tougher, yes, we will agree that the 50 percent cost of manufacturing is tougher than the 50 percent value-added which currently applies. The question is whether moving from a 50 percent value-added to approximately 55 percent value-added is very much tougher or has any significant impact.

The problem we face is that the big three, the domestic manufacturers, are starting out at somewhere around 85 or 90 and heading down to 50, and the transplants, the firms that have located in the North American market recently are starting at about 50. We want them to go higher and they are going nowhere. There is no incentive in the so-called tougher rule of origin that is going to be beneficial for North American production.

The companies that have recently located in the United States will be able to meet this so-called tougher standard and the domestic manufacturers will be able to continue to increase their foreign parts sourcing to come down to that level.

Mr. LEVIN. Okay. Maybe you could answer it as briefly as you could. Thanks. Thanks very much.

Ms. BATES. A lot of ground already has been covered. I would differ primarily in degree with regard to the duty remission programs. MEMA believes that the duty remission program, the elimination of the export-based remission program applying to the United States, is a fairly significant benefit. We remain, though, very disappointed about the production-based duty remissions, but they are phased out as they expire, terminating the last one I believe at the end of 1995.

Because of the larger size of our market and the fact that those production-based duty remission programs will be ending, our sense is that on balance there are very strong incentives remaining in the United States for the transplant assemblers and any foreign-based suppliers to continue to invest disproportionately in the United States rather than Canada. Maybe not so that it is an exact split to the degree we would like, but still the preponderance of incentive lies within the United States in the context of North America.

The rule of origin test clearly is tougher, but I would concur that 55 percent under the old formula roughly equates to 50 percent under the new formula.

Mr. LEVIN. Mr. Kadrich.

Mr. KADRICH. Thank you. I think I would second most of the comments that have been made on these issues. APAA is very frustrated, of course, with the continuation of the duty remission programs. While they are going to be phased out, it is in our estimation too little too late for an industry that is in the midst of a wrenching transition.

We are fighting to keep control, U.S. control, of the industry, and these programs further distort investment and sales toward Canada, something both sides pledged in the auto pact not to do. Both nations agreed to let market forces dictate investment and trade flows. We don't see that happening with auto pact, and the duty remission programs fly in the face of that spirit as well.

And in line with the incentive to become a Canadian parts producer, if a Japanese parts maker moves to Canada to qualify for the local production remission, and is owned by a foreign car company, also can help bring down the car companies' tariffs going into Canada on the basis of parts exports to third countries. So there is a dual incentive which is very counterproductive to us.

In addition, by investing in Canada, parts makers qualify for the auto pact value-added test. That is another reason to choose Canada over the United States. We also have on top of all these practices the matter of Canadian subsidies.

Given the fact that if there is no more auto pact treatment to use as leverage to attract transplants, we think the bulk of the investment subsidies now will be directed toward bringing foreign suppliers to Canada.

The use of more Federal Canadian dollars to bring more parts makers into Canada, when mixed with duty remission and the safeguards, combines to make a very serious investment and trade distortion in favor of Canada.

The problem is that a higher rule of origin may compound the Canadian inequities pulling foreign firms to Canada. We would like to deal with the inequities first. If we achieved a reciprocal trade situation between the two countries and got rid of Canadian distortions, then we would seek a higher rule of origin to ensure benefits for U.S. owned and Canadian-owned firms.

Mr. LEVIN. Mr. Hanna, and then Mr. Santucci.

Mr. HANNA. Is the 50 percent rule of origin based on cost of processing more stringent? The answer is yes. With respect to the duty remission, the statement that we have made is that this settles the issue. It provides the framework to get rid of this once and for all. The remission based on trade is done immediately. There is a phaseout period on production incentives, that is true, but there will be no new ones entered into. If we had our preference, we wish that had gone immediately too. But the deal that was negotiated and brought back provided for a phaseout and we think on balance that is a way of getting rid of it.

Mr. LEVIN. Mr. Santucci, you have the last word.

Mr. SANTUCCI. The answer is yes in terms of the new rule of origin is tougher than the old one. Your question on duty remissions, rather than saying the same thing which has been said, I will just refer to an article I read in, I think it was the Toronto Globe and Mail, a few weeks ago in which Hyundai was announcing that over the next year they would be exporting around 20 million dollars worth of auto parts from Canada to Korea.

Now they didn't say it was because of duty remissions they would receive. But I would like to see what their exports of auto parts from the United States to Korea are going to be and see if it is 10 times larger, since our economy, our auto parts production is

10 times larger than Canada. I would imagine it would be much smaller than that.

Mr. LEVIN. You said on duty—just quickly, in terms of the standard of preference you were worried, you said earlier, about the ability now to include royalties. Just mention that.

Mr. SANTUCCI. Well, to be fair to the negotiators—and I always sound like I am complaining that they didn't do a good job—they did make some improvements. One of the improvements was that this new rule of origin is tougher than the old one. But it isn't everything everyone who does not look at the details thinks it is, and that is the only point I was trying to make.

Under the old rule of origin, you could include profits, you could include airfare for your employees. I think I recall someone complaining once that when Honda buys baseball caps to give out to people who take plant tours, they call that local content to increase ratio. Under the old rule they could do that. Under the new rule they can't.

However, there are a lot of costs which could build up that number and still not result in significant North American value-added. Royalties is one of the costs included.

Now I was involved with a Michigan company that is negotiating on a joint venture with a Japanese company to manufacture auto parts in the United States. One of the issues discussed was royalties. How much royalty would be paid for that. The amount of royalty discussed was around 3 to 4 percent of sales.

In terms of value-added, even though the Japanese company is being paid for that royalty by the joint-venture, it is counted as North American value-added for the purpose of meeting the new rule of origin. This figure could equate to about 8 percent of the cost of the product because the royalty is paid on the value of the sales, not the value of production.

So while we do have a tougher rule of origin it is not nearly as tough as some would lead you to believe.

Mr. LEVIN. Thank you very much, Mr. Chairman.

Chairman GIBBONS. Anybody else? Mr. Pease.

Mr. PEASE. Mr. Chairman, I don't think I will ask any questions. I have been in and out and I apologize to the panel for having done that. I am happy to have had Mr. Levin here. I suspect he has covered most of the questions I would have asked you.

But I would like to thank you for your testimony. I have glanced through it and I think there are some excellent ideas here that those of us genuinely concerned about the auto industry can take and run with. I want to assure you that I will be working with Mr. Levin to try to do just that. Thank you.

Chairman GIBBONS. Thank you very much. Appreciate your testimony.

[The following was subsequently received:]

STATE OF MICHIGAN

JAMES J. BLANCHARD, Governor
DEPARTMENT OF COMMERCE
P.O. BOX 30004, LAW BUILDING, LANSING, MICHIGAN 48909
DOUG ROSS, Director

March 22, 1988

The Honorable Sam Gibbons
Chairman
Subcommittee on Trade
House Ways and Means Committee
1136 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Gibbons:

During the Subcommittee's March 1, 1988, hearing on the U.S.-Canada Free Trade Agreement (FTA), you raised the issue of "domestic content" in the context of a discussion about the Rule of Origin for automotive products entering into trade between the U.S. and Canada.

It is my impression that some question exists as to the purpose and effect of a Rule of Origin for U.S.-Canada automotive products trade, and its relationship to the U.S. "domestic content" legislation considered by your Subcommittee during 1982-83.

I would like to take this opportunity to address this question. I would also like to remove any confusion with respect to the position of the State of Michigan concerning these issues during the negotiations on the automotive provisions of the FTA.

In the context of automotive products trade between the U.S. and Canada under the FTA, the essential difference between a Rule of Origin and the "domestic content" legislation is that the Rule of Origin is established jointly as a means of promoting expanded trade in automotive products. It is used to determine the origin of an automotive product and whether it is eligible for duty-free treatment (or reduced duties) when exported to the other. The domestic content legislation, on the other hand, was a unilateral action which would have limited automotive products trade.

Rule of Origin

A Rule of Origin is a standard feature of regional free trade arrangements. Its purpose is twofold. First, in the case of U.S.-Canada trade, it is used to distinguish products that are predominately of U.S. or Canadian origin from products of third-countries. A product determined to be of U.S. or Canadian origin upon entry into the other will face a duty (generally 0) that is better than the Most-Favored-Nation (MFN) rate applicable to a similar product from any other country. In this way, the Rule of Origin prevents third-country products that would be assessed a duty if imported directly into the U.S., for example, from being imported into Canada duty-free and incorporated into another product that is exported to the U.S. duty-free under the FTA.

Second, a Rule of Origin is designed to encourage production in, and trade of, U.S. and Canadian products. By establishing a minimum value (or degree or processing) which determines whether a product is of U.S. or Canadian origin, it encourages production and use of U.S. and Canadian products that will enter into trade.

Since 1965, when the U.S. and Canada negotiated the Auto Pact, all motor vehicles and parts entering the U.S. from Canada must meet a Rule of Origin in order to enter duty-free. Under that rule, the U.S. allows any motor vehicle or original equipment part built in Canada to enter the U.S. duty-free provided that at least 50 percent of the appraised value of the vehicle or part is of U.S.-Canadian (North American) origin.

By contrast, Canada allows only "qualified" motor vehicle manufacturers -- those undertaking significant production in Canada -- to import vehicles and original equipment parts duty-free from any country, including the U.S. Canada does not require that vehicles and parts imported by "qualified" manufacturers meet the Rule of Origin in order to enter duty-free.

Under the FTA, the new Rule of Origin -- 50 percent U.S.-Canadian direct cost of manufacturing -- would apply to all vehicles and parts entering the U.S. from Canada. The rule would also apply to vehicles built in the U.S. by foreign-owned manufacturers and exported to Canada, and U.S.-built parts destine for foreign-owned manufacturers in Canada. The Rule of Origin would not apply to vehicles and parts imported into Canada by the Canadian subsidiaries of Chrysler, Ford, and GM, and probably CAMI, the GM-Suzuki joint venture, after 1989.

Effective January 1, 1989, all vehicles and parts produced in Canada meeting the new Rule of Origin could enter the U.S. duty-free. Vehicles and parts not meeting the rule would be assessed a 2.5 percent or 3.1 percent duty, respectively, the U.S. Most-Favored-Nation rate.

The 9.2 percent Canadian duty on vehicles built in the U.S. by foreign-owned manufacturers and exported to Canada will be phased-out ratably over 10 years beginning January 1, 1989. The 8.0 percent Canadian duty on U.S.-built parts exported to foreign-owned manufacturers in Canada would also be phased-out over 10 years. Foreign-owned manufacturers in the U.S. exporting vehicles to Canada, and U.S.-built parts destine for foreign-owned manufacturers in Canada, are eligible for reduced duties (during the phase-out) or duty-free treatment only if the vehicles and parts meet the new Rule of Origin.

Domestic Content

During 1982 and 1983, the Subcommittee considered the Fair Practices in Automotive Products Act, commonly referred to as "domestic content." The legislation was thoroughly considered at that time. It is my intention here to provide sufficient detail on its operation so as to distinguish it from a Rule of Origin at a later point.

The domestic content legislation consisted essentially of two parts. The first part specified the method by which the level domestic content was to be determined for each vehicle manufacturer. All manufacturers selling more that 100,000 vehicles in the U.S.

would be required to meet a minimum domestic content, increasing up to 90 percent for manufacturers selling over 900,000 vehicles.

The amount of "content" required would be calculated as U.S. value added as a percentage of the wholesale price, in the aggregate, for each manufacturer. As a value added requirement, the content would not actually have to be "contained" in the vehicles sold in the U.S. That is, the value of vehicles and parts exported could count toward meeting the amount of U.S. value added.

The second part specified the penalty for not reaching the level of content required. Any manufacturer -- foreign or domestic -- that failed to meet the requirement would have to reduce its total U.S. sales of vehicles and parts in the following year by the same percentage the manufacturer failed to meet its required domestic content level.

Conclusion

There are important differences between a Rule of Origin on the one hand, and "domestic content" on the other.

In the case of U.S.-Canada automotive products trade, the new Rule of Origin should encourage expanded trade (and production) of motor vehicles and parts of U.S. and Canadian origin. All vehicle manufacturers in Canada and foreign-owned manufacturers in the U.S. will want to ensure sufficient production or sourcing of parts in the U.S. and Canada in order to receive duty-free treatment when exporting to the U.S., or reduced duties (or 0 duties after 1997) when exporting to Canada.

Unlike the Rule of Origin, the domestic content legislation would have been a major barrier to automotive products trade. Major vehicle manufacturers wanting to sell in the U.S. market would have had to produce in the U.S. most of the vehicles they sold here. Moreover, imports would have been reduced where the content requirement was not met.

In addition, the Rule of Origin is not a consideration for vehicle manufacturers selling only in one market. For example, vehicle manufacturers producing vehicles in the U.S. that are intended only for sale in the U.S. do not need to meet the Rule of Origin. By contrast, the domestic content legislation would have ensured that manufacturers producing vehicles in the U.S. achieve a specific level of content in order to sell those vehicles in the U.S.

Moreover, the domestic content requirement would provide an incentive for exports of U.S. vehicles and parts. Vehicle manufacturers in the U.S. would be able to count the value of exports toward meeting their domestic content requirement. The Rule of Origin, on the other hand, encourages the consumption of U.S. and Canadian parts, since the value of those parts may be aggregated to meet the 50 percent Rule of Origin for vehicles.

State of Michigan Position

During the negotiations, the State of Michigan pressed the U.S. government to negotiate a higher percentage for the Rule of Origin. The State felt that the 50 percent U.S.-Canadian direct cost of manufacturing standard established by the FTA was too low, because Canada allows all vehicle manufacturers meeting the requirements of the U.S.-Canada Automotive Agreement (Auto Pact) to import vehicles and parts into Canada duty-free from any country. As a result, manufacturers in Canada have a growing incentive to source parts from third-countries. At the 50 percent level, manufacturers in Canada are able to import the engine and drive train -- high value added components that require sophisticated engineering and manufacturing technology -- from third-countries duty-free, assemble these components into vehicles, and export the vehicles to the U.S. duty-free.

For this reason, the State pressed for a 60 percent Rule of Origin. At 60 percent, it is likely that at least one of these major components would be sourced in the U.S. or Canada.

It should be noted that the Rule of Origin for vehicles entering into trade within the European Free Trade Area (EFTA) is tougher than the U.S.-Canada Rule of Origin. The EFTA, consisting of Finland, Sweden, Norway, Ireland, Austria, Switzerland, and the countries of the European Economic Community, requires vehicles to meet a 60 percent Rule of Origin, based upon net value added, in order to trade duty-free.

The State of Michigan also pressed the U.S. government to eliminate the Canadian value added requirements -- a type of domestic content for vehicle manufacturers operating under the Auto Pact. In August 1987, Governor Blanchard was joined by six other Governors representing major automotive manufacturing states in a statement which recommended an elimination of the Canadian value added requirements.

I hope this letter clarifies the relationship between these issues. I would ask that it be made part of the Subcommittee's March 1, 1988, hearing record.

Thank you.

Sincerely,

Marc Santucci

Marc Santucci
Advisor to the Governor
for Trade Policy

Chairman **Gibbons**. All right. The American Gas Association, George Lawrence, president; Alberta Northeast Gas Limited, James R. Jones, counsel; Citizens for the United States-Canada Free Trade Pact, John Buckley, vice president; Energy Fuels Corp., John R. Adams, chairman.

All right, gentlemen, let us see. Mr. Lawrence.

STATEMENT OF GEORGE H. LAWRENCE, PRESIDENT, AMERICAN GAS ASSOCIATION

Mr. **Lawrence**. Thank you, Mr. Chairman. The American Gas Association is very pleased to support the Canadian-United States Free Trade Agreement, and I would like to take this part of my oral to describe the vital role that the natural gas industry can play in meeting this Nation's energy, security, economic and environmental goals and the role that the free trade agreement can have in helping achieve those goals.

As Congress considers our trade deficit, the word "competitiveness" keeps coming up. The natural gas industry can make two very major contributions to the competitive performance of our manufacturers and industrial companies.

No. 1, natural gas is for most users the most economic and most efficient form of energy.

No. 2, new highly efficient gas-fueled electric generation will improve the economy of electric energy. As this Nation moves toward achieving its environmental goals, natural gas can in most instances provide the most timely, capital efficient and economic option for meeting those goals.

When it comes to direct substitution for imported oil, the Department of Energy study recently completed says that natural gas is the most substitutable fuel for oil and that the United States has plentiful long-term gas supplies, and we do.

The American Gas Association position has long been and continues to be that the conventional and new technology supplies in the lower 48 States, the natural gas resource base there is very huge.

And gas trade with Canada will allow the U.S. market to build this combined resource base into one which is virtually inexhaustible. Indeed, it is becoming increasingly important and recognized that the U.S. energy resource base is more gas prone than oil prone. In our estimates, in the year 1990 natural gas energy will provide 50 percent more energy in the lower 48 States than oil production. So increased gas demand is the exploration incentive our producers need, and the entire Nation will benefit.

AGA estimates that natural gas could immediately replace 350,000 barrels per day of imported oil, 720,000 barrels per day within 1 year, and 1.7 million barrels per day within 5 years. This would greatly reduce the U.S. trade deficit. But their persists particularly among industrial users and electric companies concerns over long-term supplies left over from the shortage and curtailment days of the mid-1970's before Federal field price controls on new exploration were phased out. Memories are long. Perceptions of short supply die hard, especially when those views are fomented by competitors in the energy marketplace.

AGA and the Canadian Gas Association studied natural gas trade for over a year, and last fall we issued this joint report entitled "Long-Term U.S.-Canadian Natural Gas Trade." Our main point of agreement is the necessity for regulatory stability. Once the regulatory body that decides the issues on either side of the border makes a decision, there should be no hindsight review of the trade contract thus approved. The approved trade agreement incorporates that stability.

Arguments have been made that Canadian producers have Government subsidies or that U.S. regulations favor Canadian imports. My written statement deals with that in more detail, but I would say that this is an international treaty that requires balance on both sides of the border. All Canadian gas will be treated the same with no distinction or subsidy for gas exported to the United States.

The natural gas industry at this moment is vigorously competing for major new prospective markets, especially for electric generation and industrial markets. To the extent that we are successful, currently over 95 percent of those new markets will be supplied by U.S. producers. Our supply projections to the year 2010 estimate that there will be no more than 10 percent Canadian imports, even 20-plus years hence.

The high side of our demand projections in the year 2000 are up 60 percent. In other words, we could be having new markets as much as 60 percent more than we had today and our U.S. producers would be participating in 90 to 95 percent of those much larger markets. That will provide major exploration incentives. We consider that important.

I will close where I began, Mr. Chairman, and members of the committee. The FTA will benefit all segments of the gas industry, the Nation's economy, security, and environmental goals. The consumers of both natural gas and electricity if this Free Trade Agreement is passed. Thank you.

Chairman Gibbons. Thank you, sir.

[The statement of Mr. Lawrence follows:]

STATEMENT OF
GEORGE H. LAWRENCE
ON BEHALF OF THE AMERICAN GAS ASSOCIATION
BEFORE THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRSENTATIVES
ON THE
U.S./CANADIAN FREE TRADE AGREEMENT
March 1, 1988

STATEMENT OF INTEREST

I am George H. Lawrence, President of the American Gas Association (A.G.A.). A.G.A. is a national trade association with some 250 natural gas distribution and transmission company members. These companies serve 84.3% of the gas utility customers in the U.S. and have a longstanding interest in natural gas supply security.

In this regard, A.G.A. joined with the Canadian Gas Association to form a Joint Task Force on Long-Term U.S.-Canadian Natural Gas Trade. This Task Force began meeting in the autumn of 1986, to develop some common policies on long-term natural gas trade, which they could recommend to the people and the governments of their two countries. In September 1987 the Task Force published its report, Long-Term U.S/Canadian Natural Gas Trade, which specifically endorsed a bilateral treaty dealing with natural gas trade between our two countries. The Task Force report said:

> Representatives of the natural gas industry on both sides of the border recognize their own primary responsibilities for the development of gas supplies and for the working out of financial and operational arrangements for production and delivery of gas. They recognize also that their efforts will be ineffective without the support of governments in both countries, as expressed formally in a bilateral energy trade treaty.
>
> Such a treaty could be negotiated separately or could be embodied in a broader Canada-U.S. trade treaty, such as proposed in the current free trade negotiations between the two countries. The important thing is that an agreement on natural gas trade should be concluded as quickly as possible -- ideally within the next 12 months.[1]

Therefore, I am here today to support the U.S./Canadian Free Trade Agreement only after a long and careful consideration of the energy trade between Canada and the United States. I firmly believe that the energy sections of the Free Trade Agreement will benefit consumers, producers, industry and electrical generation, as well has natural gas distributors and pipelines in both countries.

STATEMENT OF POSITION

North America is rich in natural gas resources that can provide long-term, secure energy service to citizens in both the U.S. and Canada. Before the citizens of one country can rely on the energy resources of another, however, there must be assurances that trade will not be hampered or disrupted by retroactive regulation and/or legislation on the part of either government. The Canada - U.S. Free Trade Agreement includes these assurances.

The Free Trade Agreement calls for "the freest possible bilateral trade in energy,"[2] including "secure market access for Canadian energy exports to the U.S."[3] In the future, the Agreement will guarantee nondiscriminatory tariffs, taxes and regulations that will result in more gas supplies, at more stable prices, for consumers in both countries. It will mean that natural gas can be seen as a secure, long-term source of energy to displace imported oil, serve traditional markets, and capture new markets.

Managers of industrial plants, electric utilities, and other large energy-intensive facilities need assurances that the dollars they invest in gas-fired equipment today won't turn into a bad investment in the future. The "supply insurance" that the Free Trade Agreement includes will help these investors turn to natural gas. Their fuel choice, in turn, has implications for other U.S. policies:

> First, increasing U.S. natural gas use and our gas trade with Canada will reduce U.S. dependence on oil from the politically unstable Middle East. Natural gas could replace 350,000 barrels of imported oil per day immediately and 720,000 barrels per day within one year. Over 5 years, gas could displace 1.7 million barrels per day.
>
> Second, aside from the national security benefits of oil displacement, increased gas use would improve our balance of trade. Oil at the border is 50% more expensive than natural gas. If gas displaced oil at the rates set-out above, the U.S. would reduce its trade deficit by more than $200 million per month immediately, and up to $1 billion per month within five years.
>
> In addition, more secure energy supplies will mean lower energy prices over time. These benefits can translate into U.S. products that are more competitive in world markets. This is particularly true for highly efficient gas-fueled industrial cogenerators and combined cycle power plants.
>
> Third, because it is such a clean-burning fossil fuel, using natural gas has definite environmental benefits. Natural gas not only emits fewer pollutants than other fossil fuels, it also lowers the costs of environmental compliance for U.S. industry. In addition, using natural gas as a primary vehicular fuel or as a fuel additive is being seriously considered as one way to solve serious ozone and carbon monoxide problems in several major U.S. cities.

Despite the many benefits of increasing across-the-border natural gas trade, some natural gas producers (both U.S. and Canadian) fear the Free Trade Agreement. Both groups point to "subsidies" supposedly enjoyed by their competitors. Although A.G.A. is studying the subsidy questions, it does not appear that Canadian government programs will have a significant effect in the U.S. market. For example, the Canadian Exploration Development Incentive Program is a temporary incentive program for small producers, very limited in nature, that expires on December 31, 1989. We also note that the way to "balance" Canadian incentives, if any do remain, is to provide equal incentives to U.S. producers. In any event, disincentives such as the Windfall Profit Tax should be repealed as soon as possible.

In 1987, only about 5 percent of the gas used in the U.S. was imported from Canada. A.G.A. expects this percentage to increase but only gradually, not exceeding 10 percent even by the year 2010. The real effects of the Free Trade Agreement will be to increase customer confidence in natural gas resources; to stimulate natural gas demand (with many national security, economic, and environmental benefits); and to facilitate the development of Canadian and Alaskan gas projects for future supplies.

THE FTA HAS DEFINITE NATIONAL SECURITY BENEFITS

The Free Trade Agreement greatly benefits U.S. national security. *First* it protects natural gas imports from sudden disruptions or politically motivated price increases. *Second*, it allows the U.S. to rely on some Canadian gas to displace less secure oil imports from the unstable Middle East.

On the first point, the FTA protects U.S./Canadian energy imports from the threat of sudden cut-offs. More specifically, Article 904 requires that if Canada restricts natural gas imports to the U.S., it has to similarly restrict its domestic gas consumption. Naturally, the U.S. is similarly bound. Although Article 904 does *not* apply "in times of war or other emergency in international relations"[4] it provides substantial supply security, in contrast to Middle East oil suppliers who have in the past attempted to influence U.S. policy by threatening to cut-off oil supplies in order to gain their political ends.

On the second point, the U.S. has a clear policy of displacing imported oil with natural gas. For example, the U.S. Department of Energy's report to the President, *Energy Security*, stressed the importance of substituting natural gas for imported oil.[5] The conclusions in this report were also echoed by the National Defense Council Foundation (NDCF), which published an issue alert, *Will the Future Be Reflected In the Past? -- The DOE Energy Security Report One Year Later*.[6] NDCF makes strong national security arguments that the U.S. should reduce its reliance on imported oil, in part, by displacing *Middle East* oil with *North American* natural gas.

A.G.A. has estimated that nationwide, natural gas could displace 350,000 barrels of oil a day immediately.[7] After that, we estimate that gas could displace 720,000 barrels a day within one year, and 1,700,000 barrels a day within five years. The following is a concrete example of how natural gas can displace oil in just one section of the U.S. -- the Northeastern states.

OIL DISPLACEMENT EXAMPLE:

> In 1986, electric utilities in the Northeast used 380 thousand barrels/day of oil -- roughly 56 percent of all the U.S. oil consumed by U.S. electric power plants and 7 percent of total U.S. net oil imports. If these plants were converted to natural gas, they would require an additional 814 billion cubic feet (Bcf) of gas per year to be delivered to the Northeast. Because the present infrastructure needs to be expanded dramatically to serve this load, the U.S. Federal Energy Regulatory Commission is even now considering some 42 different projects to serve the Northeast. It is significant that these projects would draw their gas from *both* domestic and Canadian sources.

Increased natural gas use surely has overriding national policy benefits. In 1987, imported oil made up about 40 percent of the nation's oil consumption. To the extent that U.S. consumers can switch to natural gas (whether from our own production or from a secure trading partner like Canada) we enhance our national security, improve our economic health/balance of payments, and even create a cleaner environment for ourselves (discussed below).

THE ECONOMIC BENEFITS OF A SECURE NATURAL GAS TRADE WITH CANADA

North American natural gas supplies are both secure and abundant. Because oil resources are being depleted at a much quicker rate than natural gas, the hydrocarbon resource base is becoming increasingly gas prone. The A.G.A. Potential Gas Committee has estimated that, with currently foreseeable technology and economics, there are 630 trillion cubic fee (Tcf) of potential conventional resources in the lower-48 states alone, with an additional 118.8 Tcf of gas resources in Alaska. When 159 Tcf of proved reserves are added to this number, the lower-48 states has the equivalent of about 50 years of conventional supply at 1986 production levels.8/ Canada has proved reserves of 97 Tcf and a total of 426 Tcf of potential and proves reserves.9/ The combined resources of the U.S. and Canada -- an extraordinary 256 Tcf of proved reserves and 1068 Tcf of proved and potential reserves -- are more than adequate to supply traditional and new markets, especially high-efficiency energy technologies that can lower the cost of U.S. goods and services.

In addition to making U.S. products more competitive in world markets (by lowering energy costs overtime), using natural gas has other balance-of-trade benefits. Imported oil is 50% more expensive than natural gas at the border. Oil displacement of the magnitudes discussed earlier, would reduce the U.S. trade deficit by more that $200 million per month immediately, and up to $1 billion per month within five years. These trade benefits should not be overlooked.

THE ENVIRONMENTAL BENEFITS OF INCREASING NATURAL GAS USAGE

Natural gas is an environmentally attractive fuel, whose use can reduce ozone and carbon monoxide pollution. Compared to other fossil fuels, natural gas emits far fewer pollutants, including carbon monoxide, nitrogen oxide, sulfur dioxide, and hydrocarbons, as well as ash, sludge, and solid waste. These pollutants can be reduced quickly since many existing emitters already have gas service and can convert easily. Using natural gas often has lower capital and operating costs too, so that the cost of reducing air pollution can be lower. Naturally, these lower compliance costs translate into financial savings for U.S. industries that are facing stiff foreign competition, at the same time that environmental deadlines, such as the nonattainment provisions of the Clean Air Act, would otherwise increase an industry's pollution control costs.

We could give numerous examples of ways to use natural gas to reduce pollutants.

1. A combined cycle gas power plant uses a gas-fueled turbine, a steam turbine and a heat recovery steam generator to generate electricity. Such units emit less than 0.3 percent of the sulfur dioxide and 57 percent of the nitrogen dioxide of comparable coal fired units, nor do they produce ash or sludge. They can be built quickly (in 1 to 2 years vs. 8 to 15 for coal or nuclear units) and are extremely cost effective. The relatively low capital cost of combined cycle units is approximately $500 per kilowatt, about 1/3 the cost of new coal units.

2. Gas-fired cogeneration systems that generate electricity and steam to run industrial processes have similar environmental, energy and cost efficiencies.

3. "Select use" of natural gas allows a plant operator to get immediate emission reductions by using natural gas with coal, in the same or even in different units. The operator's pollution control costs can be much less than installing a "scrubber" or other conventional pollution control device.

4. Besides reducing oil imports, using natural gas as a primary vehicular fuel, or as a fuel additive can reduce carbon monoxide emissions by as much as 99 percent, nitrogen oxides by 65 percent, and reactive hydrocarbons by 85 percent. Reductions of this magnitude could be the key to clean air in cities where air pollution has been an intractable problem up to now.

Before regulators and plant operators commit themselves to these options, however, they need to be assured that there will be adequate natural gas supplies in the future. Although the U.S. resources base is large enough to sustain this growth, the Free Trade Agreement provides an important extra level of supply security.

BENEFITS FOR DOMESTIC PRODUCTION

Some U.S. producers perceive Canadian gas imports as a competitive threat, which could disadvantage them. For several reasons, however, they have little to fear and much to gain from the Agreement.

First, they have little to fear because the Free Trade Agreement will have no effect on current gas trade between the U.S. and Canada or on current drilling in the U.S. The U.S. presently has a surplus of natural gas and it is the existence of these excess inventories -- not Canadian gas -- that has depressed the rate of gas exploration and production in the U.S. Excess U.S. natural gas deliverability (generally known as the gas "bubble") was 2.2. Tcf in 1987.[10] In calendar year 1988, however, A.G.A. projects that the bubble will shrink to 1.1 Tcf and that it will be essentially zero by 1990 (full year estimate). Please see Figure 1.

Two factors are causing the bubble to shrink: (1) reduced drilling (the result of low energy prices and the gas "bubble"); and (2) increased gas demand (the result of lower gas prices and increased market share). By 1989, the "bubble" will have shrunk enough to spur drilling in the U.S. Thus, U.S. drilling will pick-up despite continued Canadian imports and, in fact, A.G.A. has even factored in a gradual increase in Canadian imports of 1 Tcf in 1988 and 1.4 Tcf by 1990. Yet, our analyses still show that excess supplies are gone after 1990, creating market-driven incentives for new drilling in the U.S.

Second, allegations have been made on both sides of the border that producers in the other nation have an advantage in competing for gas sales in U.S. markets. The focal point of these complaints by U.S. producers are programs such as the Canadian Exploration Development Incentive Program. In this program the Canadian government provides a federal cash grant of 33 percent of exploration and development expenditures up to a corporate limit of $10 million of eligible expenses/year. Because the benefit itself is taxable income, the typical benefit to a major drilling company is well below the $3 million level. As evidence of this, the Canadian government estimates that only about $300 million was granted in 1987. Some industry estimators believe that this overstates the amounts paid out. Even so, this program is scheduled to be reduced by half on October 1, 1988 and to disappear entirely by December 31, 1989.

Other factors which may favor one producer over another are taxes, both federal and local, and royalty holidays. Comparison of these programs in Canada and the U.S. is extremely difficult. A.G.A. has undertaken such a comparison, based on survey data, and with peer review. We plan to have the results available in early May.

Lastly, A.G.A. firmly believes that establishing a North American natural gas trade will rebuild customer confidence and allow gas to serve promising new markets for gas-fired cogeneration and combined-cycle power plants. The price induced shortages of the late 1970s and the volatility of all energy prices since then, including gas prices, has eroded consumers' confidence in the U.S. gas resource base. The fear that natural gas was a "scarce" resource, embodied for example by the prohibitions on gas usage in the Fuel Use Act, continued even into the 1980s. It was not until last year that Congress finally repealed the Fuel Use Act and customers could buy gas for new industrial facilities and power plants without administrative impediments.

Although this legacy will be hard to overcome, one way to rebuild consumer confidence is to point to the enormous gas resource base of both the U.S. and Canada -- a combined 256 Tcf of proved reserves and 1068 Tcf of potential and proved resources. Once the FTA is in place, with its assurances that Canadian supplies will not be withdrawn from the marketplace (except under the most extraordinary circumstances) and that prices will be market based, consumers will be able to make investment decisions based on total North American resources. While U.S. resources are large, the combination of U.S. and Canadian resources provides an extraordinary degree of supply security and with it price stability. These are the kind of assurances that investors in new gas-fired industrial and power plant projects need before making large capital commitments. Time and again, gas marketers have told us that it is difficult, if not impossible, to penetrate the market for new gas-fired cogeneration and combined cycle power plants unless the customer believes that gas resources are plentiful and that supplies will not suddenly be withdrawn from their markets for political reasons.

Increased consumer confidence can translate directly into an overall increase in demand for both U.S. and Canadian producers. In no way will U.S. producers lose out to Canadian producers under the Free Trade Agreement. Rather, both countries will benefit from increased confidence in supply security, and both countries' producers will share in increased demand for natural gas. Of this market, we expect the lion's share to go to U.S. producers, predicting that domestic production would serve 90% of a 21.7 Tcf market by the year 2010.[11] Thus, while the Free Trade Agreement will have little effect on current gas trade, its real effect will be to build investor confidence and new gas markets in the future.

THE EFFECT OF U.S. NATURAL GAS REGULATIONS ON "FAIR" TRADE

There are also allegations that in order to have "fair" natural gas trade with Canada, a litany of discrete orders and opinions at the U.S. Federal Energy Regulatory Commission (which governs pipeline ratemaking) and the Economic Regulatory Administration (which authorizes energy import and exports) have to be, variously, adopted into law in the case of FERC Opinion 256, eliminated in the case of FERC Order No. 500, or revised in the case of normal ratemaking procedures. We do not think that a treaty is the place to enact an entire regulatory agenda. Further, the alleged "unfairness" is either unrelated to the Free Trade Agreement and/or totally unsubstantiated.

For example, there are complaints that FERC Order No. 500 gives Canadian gas a marketing advantage over U.S. gas. Not so -- Order No. 500 requires all producers, both U.S. and Canadian, to offer take-or-pay credits when they avail themselves of open access transportation on a U.S. pipeline. Thus, producers in both countries are treated the same.

U.S. producers have opposed Order No. 500 crediting since its inception, and have in fact opposed any take-or-pay relief from FERC at all, but that has nothing to do with Canadian gas, free trade, or the Free Trade Agreement. It has to do with proper U.S. rate and regulatory policies that stem from a lawful discussion of our federal courts. Although U.S. producers may attack Order No. 500, it is important to keep in mind that:

> As a matter of law, this program is a direct result of a decision by the U.S. Court of Appeals, which required the Commission to address the take-or-pay contract issue, A.G.D. v. FERC, 824 F.2d 981 (D.C. Cir. 1987); and
>
> as a matter of policy, Order No. 500 actually helps make the pipeline neutral about whether to transport Canadian or U.S. gas. Before Order No. 500, pipelines incurred substantial take-or-pay liability by transporting domestic gas because most U.S. producers have not renegotiated their take-or-pay contracts. In contrast, they did not necessarily incur similar liabilities by transporting Canadian gas because Canadian producers have already renegotiated their take-or-pay contracts.

This imbalance was somewhat redressed by Order No. 500. Because transportation automatically earns take-or-pay credits under Order No. 500, any disincentive transport U.S. gas compared to Canadian gas is gone. Thus, allegations that Order No. 500 discriminates unfairly against U.S. producers could not be more wrong.

As a second example, U.S. producers have also complained about FERC Opinion 256, even though it was a clear "win" for them. This specific case involves complicated ratemaking issues about how production and transportation costs for gas purchased in Canada and resold by a pipeline in the U.S. should be billed to the U.S. customers. FERC allocated more of those costs to the Canadian gas, making it relatively more expensive on the ground that it did not want to discriminate against U.S. producers. Now, having won this particular case, some U.S. producers want to enact a particular rate design into law in conjunction with the Free Trade Agreement.

They would also like legislation requiring ERA to put the same ratemaking conditions in FERC Opinion 256 in ERA's import authorizations. This would mean that a single federal case would affect rate designs for local distribution companies that buy Canadian gas directly. This is clearly going too far -- raising questions of federalism and the preemption of state regulatory authorities.

Finally, some producers want to use the FTA as an excuse to overturn other specific ERA and FERC decisions. These include an attempt to reverse ERA's decision that FERC regulates interstate transportation and that ERA should not try to put conditions on FERC Order No. 436. There are also complaints about ratemaking on the Northern Border Pipeline, a transporter of Canadian gas, even though many other pipelines (that transport only U.S. offshore gas) have similar financing arrangements and rate designs.

It seems clear that having failed to win before FERC, ERA, and/or the Courts, the complainants are using the Free Trade Agreement to achieve a failed regulatory agenda. The FTA is a treaty between two sovereign nations. It has outstanding national security, balance of energy trade, and environmental benefits. Regulatory policy, however, raises separate and discrete issues that are inapplicable to such a trade agreement. Issues of state and federal ratemaking have traditionally been delegated to special regulatory bodies precisely because they are typically not amendable to legislation, and certainly not amendable to an international treaty.

FOOTNOTES

1/ American Gas Association/Canadian Gas Association Joint Task Force, Long-Term U.S.-Canadian Natural Gas Trade, emphasis supplied, p. 4 (September 1987).

2/ The White House Office of the Press Secretary, Summary of the Agreement from the Office of the U.S. Trade Representative, Executive Office of the President, Washington, D.C. at p. 15 (October 4, 1987).

3/ Ibid.

4/ Canada-United States Free Trade Agreement, Article 2003 (December 9, 1987).

5/ United States Department of Energy, Energy Security Report to the President, DOE/5-0057 (March 1987).

6/ National Defense Council Foundation, Will the Future Be Reflected in the Past? -- The DOE Energy Security Report One Year Later, Washington, D.C. (March 1988).

7/ American Gas Association, The Strategic Role of Natural Gas In Replacing Imported Oil, Arlington, Va. (May 22, 1987).

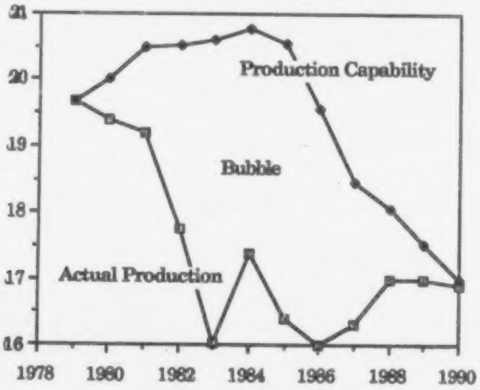
8/ A.G.A. Gas Supply Committee, The Gas Energy Supply Outlook Through 2010, Arlington, Va. (October 1985).

9/ Procter, R.M; Taylor, J.C. Wade, J.A.; Oil and Natural Gas Resources of Canada - 1983, Geological Survey of Canada, Paper 83-31; Department of Energy Mines, and Resources, 1984.

10/ American Gas Association, Natural Gas Production Capability - 1987-1990, Arlington, Va. (January 4, 1988).

11/ American Gas Association, TERA-Analysis 88-1, Arlington, Va. (January 15, 1988), at Table 3, p. iv.

Figure 1
Production and Production Capability: 1979-1990



Chairman GIBBONS. Mr. Jones.

STATEMENT OF JAMES R. JONES, COUNSEL, ALBERTA NORTHEAST GAS, LTD.

Mr. JONES. Thank you very much, Mr. Chairman. It is good to be back to this distinguished subcommittee on which I enjoyed serving for 10 years.

Chairman GIBBONS. And contributed so much.

Mr. JONES. Thank you, sir. I appear on behalf of 18 U.S. natural gas distribution companies serving markets in New York, New Jersey, and all of New England. These 18 U.S. companies collectively serve over 5 million natural gas consumers in the Northeast, or more than 80 percent of all natural gas sold in the region. All of these companies have pursued a direct and active energy relationship with Canada since the late 1970s. For example, the Boundary Gas project, which is now fully operational, was formed in 1979 by 15 of these utilities. Today, all 18 companies are now involved in a larger venture with the Canadian gas industry called the Alberta Northeast Gas Project, which will bring major gas supplies to New York, New Jersey, and Connecticut via the proposed Iroquois Gas Transmission System, and to Massachusetts, Rhode Island, and New Hampshire via the Tennessee Gas Pipeline System. On behalf of these 18 utilities in the Northeast, we believe the United States-Canada Free Trade Agreement serves the best interest of the Northeast, serves the best interest of the Nation, and should be adopted by the Congress.

Let me address the need first for the United States and Canadian gas in the Northeast market. These two supply bases, Canada and domestic gas, are fundamentally important to both the economic development and the environmental quality of the Northeast in the years ahead. Neither supply base adequately serves the region into the next century and they are not in competition with each other. Canadian supplies will not crowd out the Northeast demand for natural gas from the Southwest. Indeed, Canadian gas will expand the Northeast market and increase the demand for domestic natural gas.

These Northeast utilities first looked to Canada to augment their gas supplies for a fundamental reason. Traditional pipelines could not and cannot bring incremental supplies of long-term, economically priced natural gas from the Southwest. At one point this stemmed from the unavailability of gas, but it was also caused, more importantly, by a shortage of transmission capacity to move gas to the Northeast market.

Right now I recognize that there is a gas bubble or a surplus of gas, domestic gas, but State utility commissioners have determined that this surplus is temporary and it is expected to evaporate perhaps as soon as 1990, and therefore the utility commissions will not permit the Northeast utilities to use this gas bubble in developing a new firm load.

But the transmission of domestic gas to the Northeast is a very real problem as long haul pipelines are fully contracted and fully utilized, especially on peak days. In order to get incremental gas volumes from the Southwest to the Northeast, existing pipeline capacity must be expanded at a cost which the pipelines so far have not been willing to incur.

But let me emphasize that the need for Canadian natural gas in the Northeast market will not exclude nor diminish domestic suppliers and pipelines. Quite the contrary. The 18 companies on whose behalf I speak today purchase roughly 96 percent of their supplies from domestic producers. Even in an expanded Northeast market, domestic gas will furnish the bulk of that demand, 85 to 90 percent of the market, and in real terms the demand for domestic gas should actually grow.

But irrespective of the supply source, new natural gas supplies are needed in the Northeast for two additional reasons. First, to address the acid rain problem. Part of the answer to acid rain in the Northeast will be more usage of today's cleanest source of energy—natural gas. And, secondly, natural gas will lessen the reliance on imported OPEC oil. Just the Alberta Northeast Project alone will replace over 63,000 barrels of OPEC and foreign oil delivered to the Northeast every day.

Now how does this free trade agreement affect energy? Well, frankly, the FTA simply confirms that which is reality in the energy market. Free trade virtually exists in energy today, but the energy provisions of the agreement, while they are important, are important because more than anything else the provisions mean a commitment to a long-term, more secure trade in energy. Security of access to reliable energy supplies is clearly in our Nation's best interest.

If the energy provisions are removed from the agreement, such action would place an unnecessary and clearly undesirable cloud over today's positive relationship with Canada. The majority of the U.S. energy industry would oppose dropping these provisions. They largely support passage of the agreement.

In conclusion, Mr. Chairman, and members of the committee, the United States-Canada Free Trade Agreement is a precedent-setting accord that will eliminate many barriers to the trade of goods between our two countries. The accord is good for the Northeast. The accord is not at the expense of the Southwest. The accord is in the Nation's best interest, and we support its adoption.

Chairman GIBBONS. Thank you very much.

[The statement of Mr. Jones follows:]

STATEMENT OF JAMES R. JONES, COUNSEL, ON BEHALF OF ALBERTA NORTHEAST GAS, LIMITED

Thank you for the opportunity to appear before you today on the United States-Canada Free Trade Agreement.

I am appearing before you today on behalf of eighteen United States natural gas distribution companies which serve markets throughout New York, New Jersey and all of New England. These eighteen U.S. companies collectively serve over 5 million natural gas consumers in the Northeast and account for more than 80% of all natural gas sold in the region. They are literally the companies which comprise the natural gas market in the U.S. Northeast.

All of these companies have been pursuing a direct and active energy relationship with Canada since the late 1970's. For example, fifteen of the companies formed the Boundary Gas Project in 1979 for the purpose of importing natural gas from Western Canada. The Boundary Project is now fully operational. All eighteen companies are now involved in a larger venture with the Canadian gas industry via the Alberta Northeast ("ANE") Gas Project, which is designed to bring major new gas supplies to the growing gas markets in New York, New Jersey, Connecticut via the proposed Iroquois Gas Transmission System and to Massachusetts, Rhode Island and New Hampshire via the Tennessee Gas Pipeline System.

We believe the U.S.-Canada Free Trade Agreement is in the best interest of citizens in the Northeast. We believe the agreement is in the nation's best interest. It should be adopted during the 100th Congress.

I. The Need for U.S. and Canadian Gas in the Northeast Market

Canadian and United States gas supplies are drastically needed in the Northeast. The two supply bases will play an integral role in fostering the economic development of the Northeast in the years ahead. Since neither supply base can adequately serve our needs into the next century they are not in competition. Canadian supplies are not going to crowd out the Northeast's demand for natural gas from the Southwest; indeed, Canadian supplies will enable the market to expand, and thus should increase requirements for domestic natural gas in this market.

As noted above, the need to diversify our domestic supply base led 15 of the eighteen Northeast utilities in the early 1980's to develop a strong and growing energy relationship with Canada through the Boundary Gas project. Attempts (such as Boundary) to augment our domestic supply with Canadian natural gas were precipitated by the inability of the traditional pipeline gas suppliers to bring incremental supplies of long-term, economically priced natural gas from the Southwest. This inability at first stemmed from the unavailability of gas but by the early 1980's was also caused by a shortage of transmission capacity to move gas to the Northeast market.

The first issue -- availability of gas -- is admittedly difficult to understand in these times where many of our Southwest producers have shut in gas production. Being from the Southwest, I know all too well the plight of our domestic producers and the economic hardship they have suffered because of this so-called "gas bubble." Without going into a long explanation of how the gas bubble came about, suffice it to say our state regulators have determined that the surplus is temporary and is expected to evaporate, possibly as soon as 1990 according to the American Gas Association.

The gas exemplified by the domestic gas bubble, nonetheless, is not the type of supply state public utility commissions generally permit the Northeast utilities to use in developing new firm load. This is particularly true of new residential gas load.

Having said this, I must admit if I were a Member representing the Southwest I would be very skeptical of the statements just made. This leads me to the second reason utilities in the Northeast have turned to Canadian gas supply. Even if we had available the type of supply that would pass muster with our state regulators, there still exists the difficult problem in getting the domestic gas to the Northeast. The capacity of long haul pipelines serving the Northeast is fully contracted and fully utilized, especially on peak days. The deliveries of gas over these pipelines are at very high load factors. Thus, in order to get incremental gas volumes from the Southwest, existing pipeline capacity must be expanded at a cost which the pipelines so far have been unwilling to incur.

That fact was evidenced in the filings recently made with the Federal Energy Regulatory Commission ("FERC") in its "open season" process. Almost all of the projects filed by the domestic pipeline companies envisioned the use of Canadian natural gas to meet the demands of the proposed customers.

Despite this need for Canadian natural gas, it may fairly be said that the free flow of it into the Northeast market does not mean this will be to the exclusion of our domestic suppliers and pipelines. The eighteen companies on whose behalf I speak now purchase roughly 96 percent of their supplies from domestic suppliers. Given the fact that the Northeast market is expanding, the percentage of gas provided by domestic suppliers is not likely to decline below 85-90 percent in the long run because of the importation of Canadian gas.

Irrespective of our supply source, the availability of adequate natural gas supplies to the Northeast is very important for several reasons. Unfortunately, our country does not have a quick or easy remedy to the acid rain problem. The magnitude of the acid rain problem facing the Northeast will require both monetary and regulatory assistance. Undoubtedly part of the answer lies in more usage of today's cleanest source of energy -- natural gas.

A second reason increased reliance on domestic and Canadian natural gas makes sense is that this means less reliance on imported OPEC oil. The natural gas supplies involved in the ANE project equate to over 63,000 barrels of OPEC and foreign oil per day.

II. The Importance of the Free Trade Agreement to Energy

The free trade agreement largely formulizes the free trade arrangement which has existed between our two countries in the area of energy. While in general the FTA is truly a historic document -- as Ambassador Yeutter told you recently, "[this agreement] is as significant in the economic sphere as the arms control agreement is in the national security arena" -- for energy the FTA simply confirms that which is reality in the energy market. Free trade virtually exists today.

This is not to say the energy provisions are unimportant. They are extremely important. They are important because, more than anything else, the provisions mean a commitment to more secure trade in energy. Whether you are from the Northeast, Southwest or Pacific Basin, security of access to reliable energy supplies is in your best interest.

There are several provisions that will ensure a more secure energy trade between our two countries. In general, the agreement calls for the elimination of all bilateral tariffs starting January 1, 1989, with all tariffs generally removed in ten years. Since there are no tariffs on either side of the border with respect to natural gas, this provision will not have an impact on trade in this commodity, but will ensure a tariff free environment in the future. In addition, both countries agree to prohibit most restrictions on energy exports and imports, subject to existing GATT provisions that allow restrictions for certain national security reasons. Both governments agree not to maintain or introduce any tax, duty or charge on the export of any energy good to the other party, unless they are also introduced on such energy good when destined for domestic consumption. Finally, the agreement provides a formal right of consultation where either party considers that energy regulatory actions by the other country are discriminatory.

This Agreement means that energy prices and availability of supply will be determined by the competitive market and that secure supplies of energy will be available in the Northeast to foster its economic development and in turn its requirement for domestic gas resources. Accordingly, this Agreement will benefit U.S. energy producers and U.S. energy consumers.

Conversely, if the energy provisions are removed from the Agreement, such action would place an unnecessary and clearly undesirable cloud over today's positive relationship with Canada. The majority of the U.S. energy industry would oppose dropping the energy provisions; they largely support passage of the Agreement.

III. Conclusion

In conclusion, the U.S.-Canada Free Trade Agreement is a precedent-setting accord that will eliminate many barriers to the trade of goods between our two countries. The accord is good for the Northeast. The accord is not at the expense of the Southwest. The accord is in our nation's best interest.

Many of the Committee will probably conclude, as the Administration did, that the Agreement is a "win-win" situation. I agree with this conclusion.

Some of the Committee may decide this is a trade agreement with too many trade offs.

Whatever your perspective, the natural gas utilities of the Northeast urge you to consider carefully how this Agreement ensures long-term secure supplies of energy.

Chairman GIBBONS. Next, Mr. Buckley.

STATEMENT OF JOHN BUCKLEY, VICE PRESIDENT FOR WHOLESALE MARKETING, CUMBERLAND FARMS, INC., WESTBOROUGH, MA, REPRESENTING CITIZENS FOR THE UNITED STATES-CANADA FREE TRADE PACT

Mr. BUCKLEY. Mr. Chairman, my name is John Buckley. I am vice president of wholesale marketing for the Gulf Oil Division of Cumberland Farms, and I appreciate the opportunity that you have given us to present testimony on behalf of an ad hoc coalition of independent marketers who sell gasoline, heating oil and other petroleum products from the State of Maine right across the northern border to the State of Washington.

I don't often find myself in total agreement with George Lawrence, since we tend to battle with him for consumer dollars. We are selling oil and he is selling gas. But I certainly am in total agreement with his position on this agreement.

I am also in agreement with Mr. Jones because I agree with you, Mr. Chairman, that he served awfully ably on this committee, and it is always a privilege to appear before this group. You deal with the most sensitive area in American life, tariffs and taxes, and you deal with it fairly.

I think if there is one key principle that I would like to start off with, with respect to this agreement, it is this: under this agreement economic factors, not political or regulatory factors, will have greater sway in determining energy trade and investment decisions in both countries. I would like to tick off a number of specific benefits that I think deserve to be highlighted.

It is true that Government interference will still exist, but there will be greater certainty that economics, rather than Government policy fluctuations, will define the two energy markets. The current level of Government interference is locked in and becomes the maximum permitted, and there is a mechanism set up and certainly strong administration indications that they are going to continue working after this agreement is validated by the Congress to further reduce nontariff barriers to trade and investment.

Second, it is clear that the long-term commercial and investment relationships will grow. We don't expect any immediate dramatic impact on oil trade, but gradually the logical economic binational energy flow will result and it will be a growing trade.

Third, with the achievement of economic efficiencies, Canadian oil will provide a useful check on domestic U.S. oil prices. Greater competition fosters lower prices and the real benefits flow both to the independent marketing sector, which I am here representing, and to consumers in both countries.

Fourth, I think we cannot escape the fact that this agreement will provide increased national security on the energy front. As our two energy economies become more closely tied together, we can be somewhat less concerned about another international oil price disruption. We have had two of them in the last 15 years. We are currently importing more oil. I think it is not really a question of whether we will ever have another one, it is a question of when.

Fifth, I would point out that over the last decade of this country the close relationship, both economic and political, between Canada and the United States will allow for a more rapid development of some of the vast hydrocarbon resources found in the Athabasca tar sands, heavy oils, Arctic oils, and offshore Newfoundland. All of these have pretty high cost production. All of them in the past have incurred a great deal of risk because we didn't know what Government policy was going to be.

With the elimination of that risk, I would expect a much more rapid development, economic development, of these resources which will stand us in good stead over the next century.

Out over the medium term, the next several years, it is clear we have plenty of oil worldwide, but we are importing more. In the last 6 months Saudi Arabia once again has become our largest single supplier of petroleum. Again, the Canadian agreement won't change that fact overnight, but it does establish a foundation to gradually build closer energy ties, expand Alaskan oil sales into Canada, and Canadian oil and gas sales into the United States.

It does provide for a bilateral panel for resolving disputes and a framework to ease the nontariff barriers. It is not perfect. No trade agreement ever is. But it does bring the Hawley-Smoot tariff level, enacted in 1930, down to zero after 58 years. It does establish a precedent for future free trade agreements with Mexico, Venezuela, and others. It is a historic opportunity. There have been four attempts to tie our economy closer with Canada in the last 180 years. Now we have another chance. There will be winners and losers on both sides of the border, but when you add it all up the real winners will be the people of Canada and the people of the United States.

It is good trade policy. It is good economic policy. It is good energy policy. And if I could offer a three-word advice, Mr. Chairman, to this panel when you consider this agreement, compared to where we are now, I would say "go for it."

Chairman GIBBONS. Good advice.

[The statement of Mr. Buckley follows:]

Before the
Subcommitte on Trade,
House Committee on Ways and Means

Written Statement of the
Citizens for the U.S.-Canada Trade Pact

Mr. Chairman and Members of the Subcommittee:

Good afternoon. My name is John Buckley. I am Vice President for Wholesale Marketing of Cumberland Farms, Inc. I appreciate this opportunity to present testimony on behalf of the Citizens for the U.S.-Canada Trade Pact, a coalition of which Cumberland Farms is a member.

I. INTRODUCTION

The Citizens for the U.S.-Canada Trade Pact urge Congress to implement promptly the Canada-U.S. Free Trade Agreement ("FTA"). The FTA constitutes a dramatic reaffirmation of the close political and economic relationship between the two countries.

As its core object, the FTA would eliminate tariffs on bilateral trade. The FTA also addresses a variety of more specific issues, including agricultural trade, trade in services, automotive trade, trade in financial services, energy trade and similar matters. Changes to the customs and international trade laws of both countries will be necessary to accommodate this new relationship. Finally, the FTA creates binational institutions to provide mechanisms for dispute resolution, to administer and interpret the FTA, and to conduct reviews of final determinations under both countries' antidumping and countervailing duty laws.

The FTA energy provisions will benefit both countries by allowing economic, not political, factors to play a greater role in determining energy trade and investment flows between the two countries. The energy provisions will promote an atmosphere of assurance that government intervention will not interfere with sound commercial relationships. They also will stimulate the attainment of natural economic efficiencies in energy trade. Moreover, the FTA will eliminate many of the uncertainties surrounding the investment climate in Canada.

Although its impact in the energy sector should not prove dramatic immediately, the FTA will eliminate the uncertainties about government intervention that impeded the development of otherwise logical economic relationships between the two countries. For these reasons, the Citizens for the U.S.-Canada Trade Pact support the prompt introduction and enactment of implementing legislation for the FTA under Congress' fast-track procedure.

II. INTEREST OF THE CITIZENS FOR THE U.S.-CANADA TRADE PACT

The Citizens for the U.S.-Canada Trade Pact ("CFTP") is an ad hoc coalition of petroleum products marketers who favor implementation of the FTA. Its members are Cumberland Farms, Western Petroleum Company, By-Lo Oil Co., Striker Industries, Mid-States Petroleum and Gull Industries. These companies market refined petroleum products, largely gasoline, along the northern tier of states from Maine to Washington state.

The CFTP emphasizes that its members' support of the FTA is reflective of their long-standing commitment to free trade generally. Members of the CFTP have long been proponents of unrestricted access to offshore supplies of crude oil and refined petroleum products. Even without an actual influx of imports of these products, the mere availability of alternative sources induces efficiencies and price discipline in the U.S. market. Those effects in turn benefit energy consumers. The CFTP's support for the FTA thus is part and parcel of its members' pro-competitive stance.

III. BACKGROUND ON U.S.-CANADA ENERGY TRADE

During the 1950s and 1960s, bilateral energy trade was not subject to the same degree of government intervention as in recent years. Increased imports into the United States, and ultimately the Arab Oil Embargo and its progeny, prompted both governments to intervene heavily in their respective oil markets. This interference not only impeded trade and investment flows, but also created an atmosphere of uncertainty that discouraged the development of long-term commercial and investment relationships. It should be noted that, although outside of the scope of this testimony, there also has been varying and substantial intervention by the two governments in non-oil energy markets.

A. U.S. Import and Export Controls

The United States has long maintained restraints on imports of crude oil and/or refined petroleum products. These restraints have affected imports from Canada to varying degrees.

In 1959, President Eisenhower established the Mandatory Oil Import Program ("MOIP") restraining U.S. imports of crude oil, unfinished oils, and refined petroleum products. But overland imports were exempted from the program. This exemption meant that Canadian oil transported by pipeline or other overland method could be entered into the United States and not be subject to import restraints.

The overland exemption was terminated in 1970, however, with respect to crude oil and unfinished oils. From 1970 to 1973, imports of crude oil and unfinished oils from Canada into regions east of the Rocky Mountains were subject to relatively liberal quotas.

The MOIP was replaced in 1973 by the oil import fee program. Although special treatment was once again afforded Canada, imports from Canada nevertheless were subject to a fee-quota arrangement. Imports of crude oil and unfinished oils could be entered without fee up to a liberal quota amount for Canada alone; imports in excess of the quota were subject to the fee. The quota could be raised if consistent with the purpose of the fee program. Moreover, imports of refined petroleum products from Canada were subject to fees along with refined products imports from all other sources. These restraints on imports were a component of price and allocation controls in the domestic market. The fee program was terminated with respect to all imports in 1980.

U.S. exports of crude oil and refined petroleum products have remained modest since 1959. Indeed, exports of crude oil have been effectively embargoed since the imposition of price and allocation controls in 1973. An exception was allowed for what were essentially barter exchanges with Canada. Since 1985, exports of crude oil from the lower 48 states have been allowed, but only to Canada. Refined products exports have been permitted and have increased significantly since liberalization of the U.S. export licensing program in 1981.

The ability to import and export crude oil and refined petroleum products thus has been subject to frequent and changing U.S. government regulation. Although the United States' special relationship with Canada was recognized consistently in these programs, imports from Canada nevertheless were regulated starting in 1970. The changing and frequent U.S. government intervention injected great uncertainty into the bilateral oil market.

B. Canadian Government Intervention

Before the Arab Oil Embargo in 1973, Canada allowed liberal U.S. access to its oil resources. That event marked a watershed in Canadian oil policies, however. Subsequent Canadian oil policies displayed a much more protective attitude toward its oil resources.

As noted, U.S. import restrictions did not apply to overland imports until 1970, and Canada refrained from restraining its exports until 1973. U.S. imports of crude oil and refined petroleum products from Canada thus grew steadily and dramatically throughout the 1960s. Despite the imposition of U.S. import quotas in 1970, U.S. imports of all crude petroleum and refined petroleum products from Canada continued to grow until 1973, when it reached a peak of nearly 484 million barrels (or an average 1.3 million barrels per calendar day).

In that year, however, Canada reacted dramatically to the world panic engendered by the Arab Oil Embargo. Canada imposed crude oil and refined products export restraints in March 1973. Sharp increases in shipments to the United States preceded this action. Canada further implemented an export tax in September 1973 to make domestic price controls effective. U.S. imports from Canada fell sharply to 170 million barrels in 1978, and fluctuated until they reached a post-1968 low of 163 million barrels (447,000 barrels per calendar day) in 1981.

Between 1973 and 1985, therefore, Canada has had a regulated oil market. The Canadian government controlled prices in Canada, and export restraints continued in the form of a surplus test and export licensing requirements. With the recent oil glut, there has been liberalization and decontrol since 1985. Indeed, U.S. imports of all petroleum products from Canada have increased steadily since 1981 to reach 288 million barrels in 1986 (or an average 789,000 barrels per calendar day).

The Canadian government also interfered significantly in energy investment. During the 1960s, foreign ownership expanded dramatically. Some limited restrictions were adopted (such as the limits on production licenses on federal lands), but serious action was not taken until the 1970s, and then in conjunction with a broader program to limit U.S. involvement. During that decade, the government of Prime Minister Pierre Elliot Trudeau introduced the Foreign Investment Review Act program. This program enabled the Canadian government to screen and, where it deemed appropriate, prohibit the acquisition of Canadian business enterprises. The general program was prompted by a Canadian perception that U.S. investors were increasingly dominating Canadian industry.

These broader concerns were accentuated in the case of oil because of its importance and because of fears that without government intervention Canada would be relegated to the role of a supplier of natural resources to the United States. Petro-Canada -- a federally-owned corporation -- was created in 1975, and rapidly became Canada's sixth largest producer. The most draconian intervention, however, was effected through the National Energy Program ("NEP") implemented in 1980. The NEP contained a requirement of 50 percent Canadian ownership of the oil and gas industry by 1990, and other Canadianization provisions. U.S. investors immediately began to sell their ownership shares so as to secure the maximum possible value before the forced divestment. This policy has been eased substantially since 1984, however.

C. Consequences of Policies of Government Intervention

There thus has been a history of substantial government intervention in the energy markets of the United States and Canada since 1970. This interference has had two consequences.

First, government intervention has interfered in the operation of the market. Long-term contracts for supply have been discouraged. Indeed, current Canadian regulations require the insertion of a clause in oil export contracts relieving the Canadian exporters of their obligation to export if restricted by the Canadian government. Moreover, U.S. ownership of Canadian energy companies was subject to forced divestment under the NEP, reducing the return received by U.S. investors.

Second, and more importantly, this tradition of government intervention injected considerable uncertainty into the market. Perhaps more significant than the mere presence of government intervention was the frequent change in the intensity and form of government intervention. In a stable, albeit pervasive, regulatory environment, businesses can still enter into long-term relationships because they have confidence in the perpetuation of the current rules of the game. Even though the relationship might be structured differently than without government interference, the relationship nonetheless would develop.

An atmosphere of frequent changes in the rules of the game, however, causes perceptions of greater risk. U.S. importers have been discouraged from relying on Canadian supplies -- despite the fact that they might be the most logical in terms of cost, geography, and similar factors -- because of the very real possibility that future U.S. import restraints or Canadian export restraints would make continued access difficult or impossible. Conversely, a Canadian exporter cannot feel assured about exporting to the U.S. market when Canadian government export restraints or U.S. government import restraints could subsequently deny market access. Nor can a U.S. investor feel secure about an investment which may become subject to new and more rigorous Canadian equity limits, and even divestment requirements.

Government interference in the market, and the consequent uncertainties it created, have prevented the achievement of economic efficiencies possible from close and logical bilateral relationships. The FTA promises to permit, to the extent appropriate, the creation of long-term commercial and investment relationships. These relationships will be dictated by economic factors, not by political circumstances, and thus will benefit consumers in both markets by virtue of enhanced efficiencies and other effects. In many senses, therefore, the FTA constitutes a return to conditions in the bilateral market preceding the tumultuous events in the world energy market of the 1970s.

IV. THE IMPACT OF THE FTA IS TO REMOVE THESE ARTIFICIAL IMPEDIMENTS TO BILATERAL RELATIONSHIPS AND THE ACHIEVEMENT OF ECONOMIC EFFICIENCIES

The FTA will have two basic effects on bilateral trade in the energy sector. First, the FTA will stimulate greater assurance about the government regulatory environment, which will inspire confidence in the creation of commercial and investment relationships as well as help to dampen panic in the event of dramatic disruptions in the world energy market. The FTA also will stimulate the achievement of economic efficiencies that otherwise might be lost because of government intervention in the market. These consequences in turn have favorable implications for both U.S. and Canadian energy security.

A. The FTA Will Stimulate Certainty as a Basis for Bilateral Relationships in the Energy Sector

The FTA will stimulate greater certainty in the business community regarding doing business in Canada or in the United States. The FTA will reduce risks posed by entry into bilateral commercial or investment relationships.

Before turning to the ramifications of this greater certainty, however, "certainty" must first be defined. It means a greater level of confidence that political or nationalist factors will not alter or destroy bilateral relationships. In essence, greater certainty causes the reduction of risk assessments relating to doing business in Canada or the United States. The greater certainty about the future fostered by the FTA also relates to the degree of panic that results from dramatic dislocations in the world energy market; the sense of security engendered by a stable bilateral energy relationship should help to moderate panic in the event of a sharp disruption of supplies from, for example, the Middle East.

1. Commercial Relationships

The FTA will stimulate this greater certainty in three ways. First, it will facilitate the establishment of long-term commercial relationships where dictated by geography and other economic factors. The FTA reaffirms the obligations with respect to energy of both governments under the General Agreement on Tariffs and Trade ("GATT"). This incorporation of GATT into the FTA means that quantitative import restraints may only be imposed in certain, limited circumstances. Moreover, the FTA specifically acknowledges that GATT prohibits minimum-export and minimum-import requirements in all circumstances in which other quantitative restraints are prohibited. These provisions will assure that import restraints are confined to types (and implemented in accordance with procedures) agreed upon by both governments in GATT.

With respect to export measures, the FTA will ensure that supplies are not totally disrupted. An export restraint may not limit Canadian exports to the United States (or vice versa) below the U.S. share of total Canadian supply during a recent representative period. In addition, export restraints may not include government measures that result in a higher price for exports than for domestic sales of the energy product. Finally, the FTA prohibits the incorporation in export restraints of government measures that would disturb normal channels of supply or normal product mixes (for example, the proportion between crude oil and refined products in total exports).

The FTA thus promotes greater certainty in access to supplies. That additional assurance is particularly important when assessing the risks entailed by another oil crisis. The FTA alleviates, with respect to Canada at least, some of the fear that another world oil crisis would bring a repetition of the Canadian export or U.S. import restrictions.

2. Investment Relationships

Second, the FTA will foster the establishment of long-term investment relationships. The FTA will permit investment relationships to be determined more by capital availability, reserves and market conditions than by political factors. Moreover, U.S. investors will not have to hold as great a fear of nationalization, minimum equity restrictions, performance requirements, or the like imposed by a new Canadian government.

The FTA accomplishes this by "locking in" the more liberalized current Canadian investment rules applicable to the energy sector. Under the FTA, Canada may impose energy investment regulations no more restrictive than those in force on October 4, 1987. These regulations have been dubbed the Masse Policy, which embodies a set of rules regarding various aspects of energy investment.

The Masse Policy contains the following major elements:

- Foreign investors will be prevented from directly acquiring a healthy Canadian company in the oil and gas sector.
- Nevertheless, the Canadian government will consider permitting the direct acquisition of a Canadian business that is financially unsound by U.S. investors. If a Canadian oil and gas enterprise is already foreign-owned, the Canadian government will normally permit sale to another foreign investor, albeit perhaps with some generalized commitment to expand Canadian ownership.
- With respect to indirect acquisitions, the Canadian government may insist upon some general commitment to expand Canadian ownership without imposing any specific requirements.
- The Canadian government will continue to require that entities seeking production licenses for Canadian federal lands be 50 percent Canadian owned.

In essence, Canada committed in the FTA to maintaining an investment policy in the energy sector that is no more restrictive than the Masse Policy.

The Masse Policy obviously perpetuates some obstacles to U.S. investment in the Canadian energy sector. By mandating that the Masse Policy is the maximum degree of government intervention, however, the FTA provides substantially greater certainty for potential U.S. investors. Canadian energy investment policies have fluctuated, but displayed a general movement toward greater "Canadianization" in ownership regulations since the 1960s. This trend culminated with the NEP's requirement of 50 percent Canadian ownership by 1990, and the associated buyout of U.S. energy investments by Canadian investors. This program abated somewhat with the advent of the Masse Policy. The FTA minimizes the risk of a repetition of this evolution and thus provides greater clarity for U.S. investors. This greater assurance -- that the investment climate in Canada will remain stable for the foreseeable future -- is a positive development despite the retention of substantial Canadian government regulation of investment in the energy sector.

3. Effects in the Event of Market Disruption

Finally, the assurances provided by the FTA will help to assuage, albeit not eliminate, the panic that normally follows dislocations in the international energy market. It is this panic, rather than actual physical supply shortages, that has tended to cause rapid oil price increases.

In the future, the United States will inevitably be reliant to some degree on foreign oil supplies. This reliance need not amount to vulnerability, however. If events in a politically unstable region like the Middle East disrupt oil supplies, the assurance of access to Canadian supplies embodied in the FTA will help to dampen the panic. As noted above, there will be less chance of a repetition of the Canadian government export restraints that followed the Arab Oil Embargo in 1973. The FTA provisions, moreover, signify to the market that not all foreign sources of crude oil and petroleum products are susceptible to political interference, and that the impact of a disruption in supply should be evaluated in its specific regional context rather than immediately assumed global in scope.

B. The FTA Will Stimulate the Achievement of Economic Efficiencies in Bilateral Energy Trade

The FTA also will stimulate the attainment of economic efficiencies in bilateral energy trade. The history of government intervention related above has hindered or prevented the achievement of such efficiencies. Although they will not be dramatic in magnitude, there are clear economic complementarities that can be developed, if only by virtue of the elimination of tariffs or geography. Moreover, long-term investment relationships are made more possible by the FTA, thereby enhancing the likelihood of the long-term development of high cost Canadian reserves.

1. Elimination of Tariffs

The clearest complementarity of the FTA will be the benefit provided consumers through the elimination of tariffs. U.S. tariffs on crude oil and petroleum products are significant; their elimination will yield substantial benefits for U.S. consumers, especially along the northern tier.

Current U.S. tariffs on crude oil equal either 5.25 cents per barrel or 10.5 cents per barrel, depending upon the oil's specific gravity. For petroleum products, U.S. tariffs range from 5.25 cents per barrel on distillate and residual fuel oils (with a specific gravity under 25 degrees API) to 52.5 cents per barrel on motor fuel and 84 cents per barrel on lubricating oils. Imports of kerosene and naphthas, except those qualifying as motor fuel, are assessed a duty of 10.5 cents per barrel.

U.S. imports of these products from Canada are substantial and growing. U.S. imports of crude oil and shale oil from Canada, for example, increased from 175 million barrels in 1985 to 209 million barrels in 1986. Moreover, Canada is one of the most significant sources of U.S. crude oil imports, accounting for more than 12 percent of total crude oil imports in each year since 1985. Canada placed within the top three sources of U.S. crude oil imports during that period. A similar situation exists with respect to petroleum products. Canada has been a leading source of U.S. imports of motor fuels and lubricating oils, among other items.

The elimination of tariffs on these imports will provide substantial savings to U.S. consumers. This benefit of the FTA can be illustrated by using 1986 as an example. In that year, U.S. consumers paid $17.8 million in regular customs duties on imports of crude oil from Canada, and another $6.9 million in duties on imports of Canadian gasoline. These costs were concentrated disproportionately among consumers along the northern tier of states. During the period January-October 1987, for instance, only 2.3 percent of Canadian crude oil and 11.0 percent of Canadian gasoline was imported through ports outside of the northern tier. Nor are these imports distributed widely once entered; generally, they are refined and/or marketed regionally where imported.

The elimination of tariffs on imports of Canadian crude oil and petroleum products thus will mean substantial savings for consumers of these products, especially in the northern United States. This is the clearest and most direct, but by no means the sole, benefit of the FTA energy provisions.

2. Commercial Relationships

Simple geography dictates that there are many complementarities along the northern tier of the United States. Regional situations in both countries — such as location of transportation facilities, location of refineries and terminals, location of pipelines, local competitive circumstances and the like — inevitably will lead to complementary relationships along the borders. Some clear potential examples include:

- Canadian Crude Oil and Northern Tier Refineries

  There are existing relationships between U.S. refineries in the Midwest and Canadian crude oil exporters. A major pipeline runs from Edmonton, Alberta through Minnesota, Wisconsin, Illinois, Indiana and Michigan before returning to Canada near Windsor, Ontario. Refineries located near St. Paul and Chicago have long obtained crude oil supplies through this pipeline. In the period January-October 1987, for example, more than 69 percent of total U.S. crude oil imports from Canada entered through Minnesota or Illinois customs districts. The FTA will provide greater assurance that those supplies will remain secure. Moreover, the U.S. Midwest contains asphalt refineries and refineries capable processing heavier grades of crude oil. These refineries can complement Canadian producers of heavy oil and tar sands as those higher cost resources are exploited in the future.

- Alaskan North Slope Crude Oil and Western Canadian Refineries

  An opposite complementarity might exist along the U.S. West Coast. Crude oil extracted from Alaskan North Slope ("ANS") fields has engendered an oil surplus west of the Rocky Mountains in the United States. There are no U.S. pipelines available to transport this oil to the more needy Eastern regions. U.S. law, moreover, generally prevents the exportation of this oil, even to refineries located just across the border in Vancouver, British Columbia. The FTA would allow the export of a limited quantity (50,000 barrels per day on average) of ANS crude oil to these refineries. Moreover, the requirements of the Jones Act will still be respected by the FTA. Under the FTA, the ANS crude oil must be shipped by tanker to Washington state before being transported by pipeline to Vancouver. In turn, gradually diminishing supplies of Canadian light crude oil can be redirected East to Canadian and U.S. refineries serving the Midwest and Atlantic regions. Both countries thus can benefit by a more efficient and secure regional allocation of crude oil supplies.

- Canadian Energy Supplies Serving New England

  The scarcity of various energy resources in New England is well known. The FTA will provide a more favorable atmosphere for the establishment of long-term complementary relationships in the energy sector to ameliorate these problems. Canadian refineries located in Newfoundland and Nova Scotia can serve New England refined products markets. In the period January-October 1987, for example, 4.1 million barrels of Canadian gasoline entered the United States through New England customs districts. These imports represented more than 46 percent of total U.S. gasoline imports from Canada. Under the FTA, the Canadian refineries can be more assured that those markets will remain open while U.S. consumers can be more assured that those supplies will remain available. The same effects would hold true in the realm of hydroelectric energy, where Quebec has expressed an interest in exporting more electricity into New York and New England.

- Transportation of Beaufort Sea Crude Oil through the Trans-Alaska Pipeline

  A more speculative, long-term complementarity might be cooperation in the development and transportation of remote Arctic reserves. For example, the Trans-Alaska Pipeline could be used to transport crude oil production from remote northern Canada. Canada appears to have substantial reserves in the Beaufort Sea-Mackenzie River Delta region along its northern coast. These reserves, however, are located in a harsh environment and are very costly to develop and produce. In the event that the world price of oil rises to a substantially higher level, these reserves may become more justified economically. A logical complementarity therefore would be to avoid the enormous expense and ecological risk of constructing a new pipeline when the crude oil could be transported through the existing Trans-Alaska Pipeline. Other, similar complementarities in these remote northern regions also can be envisioned.

3. Investment Relationships

The FTA also could stimulate the achievement of efficiencies in the area of investment and even the sharing of technology. These benefits appear more speculative because of current conditions in the world energy market. Nevertheless, the FTA will provide a stable foundation for the mutually beneficial development of petroleum reserves when justified by conditions in the world market.

Both the United States and Canada possess substantial oil reserves that are extremely expensive to exploit. Colorado and Wyoming in the United States, and Alberta and Saskatchewan in Canada, contain large reserves of tar sands and/or heavy oil. Moreover, Canada has potentially large reserves in the Beaufort Sea/Mackenzie River Delta region and offshore along its Atlantic coast. All of these reserves are extremely costly to explore, develop and produce. The tar sands/heavy oil require special processing to convert into synthetic fuels to be used commercially. Although apparently comprised of lighter grades of crude oil, the Arctic and offshore reserves are in remote, harsh environments. Indeed, certain reserves may not yet be recoverable because of the need for more advanced technology before commercial operations could commence.

The development of these reserves cannot be justified economically under present market conditions. The world oil price is simply not high enough to stimulate investment, exploration or development. The artificial stimulation of such development would not benefit either country because it would require protected markets in which the price of oil would be considerably higher than the international price. Such a differential would undermine the competitiveness of energy-consuming industries in both countries.

If and when the world oil price does reach appropriate levels, however, the FTA will further stimulate the exploitation of these high cost reserves in two ways. First, it will provide a larger assured market over which to spread development and production costs. The oil produced from these reserves will flow to its natural markets, rather than to markets circumscribed by political factors.

In addition, the FTA will provide a stable investment climate. Such stability will be important given the large amount of capital needed. Under the FTA, a larger pool of capital will be available from which to draw for the exploitation of these high cost resources.

Finally, technology flows may be enhanced by the FTA. The more remote reserves, as noted, will require advanced technology to be made commercially feasible. Synthetic fuel production, deepwater operations, and harsh Arctic environment operations all will benefit by a sharing of experience and technology between the national oil industries. The greater atmosphere of assurance fostered by the FTA will facilitate the sharing of this technology. The FTA will dampen fears, for example, that technology shared will later be nationalized and used against the provider. The long-term relationships permitted by the FTA, and the greater confidence it inspires, will provide a solid basis for the necessary cooperation.

Various economic efficiencies thus will be promoted by the FTA. The least cost alternative for crude oil and refined products will prevail along border regions, stimulating competition and benefitting consumers. The FTA also will engender price discipline simply by virtue of the availability of assured alternate sources of supply. The mere availability of crude oil and refined products from Canada, in other words, will provide an incentive for U.S. producers to engage in competitive pricing. Finally, the FTA may accelerate the rate at which high cost reserves are brought into production, when otherwise justified by world market conditions, because the FTA will provide a larger assured market for production and a more favorable investment climate.

C. Implications for Energy Security

The FTA will have beneficial implications for energy security for both countries. Although the FTA will not provide immunity from world market conditions, it will render both countries better able to withstand the political exploitation of energy resources or sharp disruptions of supply.

The FTA will provide the foundation for the complementary, efficient and sound operation of the U.S. and Canadian energy markets. Such markets should prove more resilient and more secure in a volatile world energy market. The assurance of Canadian supplies, for example, should dampen the panic that often follows interruptions in the flow of Middle Eastern supplies.

Finally, both countries will benefit by the greater political and economic flexibility permitted by resilient energy markets. The actual and perceived vulnerability of the United States to Middle Eastern sources of supply, for example, will be reduced by the assurance of supplies from Canada. The United States accordingly will be better able to select policy options that will lead to long-term stability in the region as opposed to policy options that might expediently assure continued flow of petroleum supplies in the short run.

V. CONCLUSION

The FTA should not be expected to cause dramatic changes in the U.S. and Canadian oil markets. Rather, it should be viewed as an exercise in foundation-building. The FTA will place bilateral oil trade on a sound footing by permitting economic, rather than political, factors to play a greater role in determining bilateral trade in crude oil and refined petroleum products as well as bilateral investment flows. In many ways, the FTA constitutes a restoration of the more rational bilateral energy policies of the 1950s and 1960s. The Citizen for the U.S.-Canada Trade Pact therefore believe that the FTA is in the best interests of the United States as well as Canada, and urge its prompt implementation.

Thank you for your kind attention. I will be pleased to answer any of the Subcommittee's questions at this time.

Chairman GIBBONS. Now, Mr. Adams.

STATEMENT OF JOHN R. ADAMS, CHAIRMAN OF THE BOARD, ENERGY FUELS CORP., ALSO ON BEHALF OF THE URANIUM PRODUCERS OF AMERICA

Mr. ADAMS. Thank you, Mr. Chairman. I am John Adams, chairman of the board of Energy Fuels Corp. We are currently the largest producer of uranium in the United States. I am also here representing the Uranium Producers of America, which is a trade organization made up primarily of all the other uranium producers in the United States.

Regretfully, I appear before you today to urge that the FTA with Canada be rejected. We don't oppose the elimination of trade barriers, but we do oppose a treaty that allows the use of subsidies and nontariff trade barriers to compete against U.S. industries.

Since the agreement is subject to an up-down vote with no amendments, the uranium industry has no option but to urge that our trade representatives be instructed to return to the bargaining table to get a fair agreement for both sides of the border.

In order to better understand the plight of the U.S. uranium industry and to see how the industry has been sold out by the FTA, a short history may be helpful.

Uranium has always been viewed as a special commodity because of its national security implication. It was first controlled by the Federal Government, who was really the only buyer of uranium.

But in the 1960s, Congress encouraged private investment in and ownership of uranium reserves to supply the expanding nuclear industry in this country. To promote investment, Congress gave assurances to the industry that its viability would be maintained, because of national security implications and the belief that energy independence was a worthy goal.

The assurance was embodied in the Atomic Energy Act of 1964, and specifically, section 161(v) of that act, which required that the Atomic Energy Commission, which then became the Department of Energy, maintain the viability of the uranium industry.

With these assurances, the private sector responded with $3 billion in investment, and by 1979, we had an industry that had about 22,000 employees, was producing 40 million pounds of uranium, and had production centers in eight States.

The price of uranium in 1979 was $43 a pound. This was artificial. There was a perception on the part of the utilities that there wasn't going to be enough uranium in the world to supply all of the needs of the aggressive nuclear program.

Another problem was the fact that because of the leadtimes in the nuclear fuel cycle, the utilities had to enter into fixed-requirement contracts with the DOE, whereby they had to deliver uranium regardless of the status of their power project. So if some of their projects were being canceled or slowed down, they still were required by the DOE to deliver uranium.

When 1980 rolled around, or about that time, the utilities began to release all their inventory. They just couldn't stand to hold it anymore with 18- to 20-percent interest rates.

And so the industry had a glut of inventory on the market. This was further magnified by the fact that there were new projects coming on in Canada and Australia in anticipation of a large nuclear demand.

So at this time, there was an 8-year forward supply of uranium. It wasn't until 1985 that the demand for uranium outstripped the production. There is still a 4-year forward supply of world demand for uranium.

The uranium industry, because of this inventory glut, collapsed. Production has gone from 43 million pounds to 12 million pounds. There has been a 90-percent employment reduction; $800 million has been written off by the industry. Interestingly, U.S. demand for uranium now is about 40 million pounds a year.

In 1982, Congress ordered the DOE to do a viability assessment. The 1983 viability assessment done by the DOE, for some strange reason, said that the industry was viable. But every year since then, the industry has been viewed to be nonviable by the DOE. Even though they are nonviable, the DOE refuses to take measures to maintain the viability of the industry.

Out of frustration, uranium producers sued the DOE in Federal district court in 1984, and the court ruled in favor of the producers. They ordered that the DOE begin enrichment limitations. The DOE then appealed to the Tenth Circuit Court of Appeals. The Tenth Circuit Court upheld the district court. And now the issue is in the hands of the Supreme Court.

Just as we believe that we are about to get some relief, possibly in June of this year, along comes the FTA. It represents a devastating exception to the provisions of 161(v) of the Atomic Energy Act. Under chapter 9, Canada is exempt from enrichment limitations that may be imposed under 161(v). It makes mute the producers' lawsuit against the DOE and reverses 24 years of congressional policy with respect to uranium.

The trade representatives offered this exemption to Canada for one major reason. That is that it got them off the hook on the lawsuit with the producers, and it allowed their enrichment industry to be protected.

Remember, uranium is a special commodity that has been historically protected because of national-security concerns. The continued sale of subsidized Canadian uranium will lead to the demise of the U.S. industry, at least in my opinion.

The nuclear Navy uses 6 million pounds a year of uranium. Where will they get this uranium? Not from Canada or Australia, because non-proliferation policies prohibit the use of uranium for military purposes.

The administration maintains there will always be a uranium industry, but they don't realize how weak the industry is, and they fail to take into account the past monopolistic practices of the Canadian Government, such as the uranium cartel that was formed under the protection and direction of the Canadian Government in the 1970s, which attempted to set minimum prices.

The danger of future monopolistic prices being engaged in by Canadians and other world producers has already been acknowledged by the Department of Energy. One example of this is just after the free trade agreement was signed with Canada, there was an announcement in Canada that the two major uranium producers in Canada, Eldorado and SMDC, were entering into merger negotiations.

At any rate, the best protection for a secure source of supply is a healthy U.S. industry. To understand the Canadian industry, one only needs to understand one word, and that is "subsidization."

The industry is controlled and financed by the Provincial and Federal Governments of Canada. Over $3 billion has been spent over the last 10 years to prop the industry up.

The Government protects their industry by prohibiting foreign companies from owning more than 49 percent. So if I am a uranium company, and I want to go up and have Canadian uranium, or find Canadian uranium, I can only own 49 percent of that company. The Canadian Government will control 51 percent.

One of the production areas in Canada is in Ontario. It is a high-cost deposit, low-grade. It would have been shut down a long time ago, except that it enjoys a 40-year contract with Ontario Hydro, the Government-owned utility, with prices at $85 a pound when the current world-market price is $17 a pound.

That is another example of a nontariff trade barrier, is that U.S. producers are basically locked out of sales to Canada. There is no direct prohibition, but government policy says that there will be a 20-year forward supply of uranium, and it has to be a secure source of supply, which is defined as Canadian uranium.

Saskatchewan, the premier uranium area in Canada, never would have been opened in the depressed market of the 1980s had it not been for a $750 million Government loan guarantee from the Province of Saskatchewan.

With respect to U.S. trade laws, sometimes they just don't work. Canada has circumvented many violations of U.S. trade law which narrowly define dumping and subsidization. For instance, instead of loaning directly to SMDC $750 million, SMDC went out and borrowed $750 million from a U.S. bank, and got a guarantee from the Province of Saskatchewan for the bank. When the loan was not repaid, it was merely rolled over, and the Government guarantee was extended.

At the conclusion of the trade negotiations, Mr. Reisman, the Canadian trade negotiator, said,

> The trade covered by the items we eventually agreed to are close to three-to-one in favor of Canada. Our people were way ahead of them in terms of the analysis, the investigation, the facts, the methods, the procedures, the whole business. You would think that the United States was an underdeveloped country alongside us in terms of the way this negotiation went.

Mr. Chairman, I am sorry to say that with respect to the FTA and uranium issues, I agree with Mr. Reisman's assessment.

That concludes my remarks. I would be happy to try to answer any questions if you have any.

[The prepared statement follows:]

STATEMENT OF JOHN R. ADAMS, CHAIRMAN OF THE BOARD, ENERGY FUELS CORPORATION

INTRODUCTION

My name is John R. Adams and I am Chairman of the Board and Chief Executive Officer of Energy Fuels Corporation which is the nation's largest producer of uranium for use in the generation of commercial power. Energy Fuels also mines coal and gold and has ranching, construction and banking interests in a five-state region. I am also here as a representative of the Uranium Producers of America which is a trade association comprised of most of the country's uranium producers.

STATEMENT

It is with regret that I appear before you today to urge you to reject the Canadian Free Trade Agreement (the "FTA"). I do so, not because uranium producers oppose the elimination of trade barriers among nations; rather, because we believe our trade negotiators should have insisted upon fairness for industries on both sides of the border. Quite simply, because our trade negotiators were more concerned about the precedent the agreement will have on other trading relationships, they agreed upon a number of provisions which are simply bad policy. Our trade representatives should be directed to return to the bargaining table to achieve a trade agreement consistent with the objectives of free trade and fairness and not just the label "free trade."

The Significance and History of the Uranium Industry.

Uranium is a special commodity which, because of its national security implications, is subject to extensive regulation by most producing and consuming countries. The major producing nations are South Africa, Australia, Canada and the United States. With the exception of production from South Africa, producing countries place stringent non-proliferation controls on the commodity. These controls have a direct effect upon the uranium market. As a commodity, uranium can be transported around the world for pennies but, because of the politics of non-proliferation, some uranium is more acceptable to consuming countries than others. For example, much of Europe and most Asian consumers prefer South African or Central African uranium because the non-proliferation regulations are much less stringent than those imposed by the United States, Canada and Australia.

For much of the recent past, the United States was the largest producer of uranium in the world. At first, all U.S. uranium production was controlled by the federal government. However, in the early 1960's, Congress decided to encourage the private investment and ownership of uranium reserves and production; but because of the commodity's national importance and the newness of the nuclear industry, Congress assured the private sector through Section 161(v) of the Atomic Energy Act (the "Act") that its investment would remain viable. As Congressman Wayne Aspinall of the Joint Committee on Atomic Energy stated during the floor debate on the passage of the Private Ownership of Special Nuclear Materials Act: "Section 161(v) was intended to "protect our [domestic uranium] industry from possible ruinous competition... by providing restriction on enrichment of foreign uranium. Congressman Les Morris, also a member of the Joint Committee added that Section 161(v) would "protect our industry against ruinous competition from cheap, foreign uranium."

Accordingly, the Atomic Energy Commission, as the predecessor to the United States Department of Energy ("DOE"), was mandated to maintain the viability of the U.S. industry in order to attract private investment.

Private industry responded to this invitation and, in the late 1960's and 1970's invested in excess of three billion dollars in mines and mills. By 1979, the country was producing approximately forty-three million pounds of uranium per year, directly employing in excess of 22,000 people. Production was centered in Wyoming, New Mexico, Colorado, Utah, Arizona, Texas, Washington and Florida.

While the industry responded to the congressional invitation, fundamental changes were taking place in the marketplace. Uranium prices, in 1979, reached $43.00 per pound, but much of the demand was artificial due to DOE uranium enrichment policies.

In anticipation of continued large increases in electrical demand, the nation's utilities planned a very aggressive nuclear power program. Because of the lead times of the nuclear fuel cycle, they entered into DOE enrichment contracts which required uranium deliveries irrespective of the status of the power project. These "fixed requirements" contracts kept the demand for uranium artificially high while the nation's nuclear power program was being severely curtailed. In 1980, the market began to react to the oversupply of uranium. Large inventories of uranium were liquidated by utilities which no longer needed enriched or natural uranium, or whose inventory carrying costs were unacceptably high. Market prices plummeted from $43.00 to $17.00 per pound, and the world held an eight year forward inventory of uranium. Equally devastating was the fact that many projects in other producing countries such as Australia and Canada were just coming into the market. These projects had been planned on the basis of the optimistic projections of the 1970's and simply aggravated the inventory situation. It wasn't until 1985 that world demand exceeded world production. There are still approximately four years of forward inventory keeping the uranium markets at the depressed $17.00 per pound level.

Inevitably, the lower prices led to a retrenchment among U.S. producers. Employment fell from 22,000 to not more than 2,000 and production declined from forty three million pounds to approximately twelve million pounds U_3O_8 per year. Since 1980, in excess of eight hundred million dollars have been written off by the industry. Many mines have been flooded and mills decommissioned.

With the collapse of the uranium market, producers asked DOE to live up to its obligations under Section 161(v) of the Atomic Energy Act; but DOE refused and also refused to evaluate the viability of the industry. In 1982, Congress directed DOE to determine, annually, the industry's status to see if Section 161(v) should be invoked. DOE's first evaluation for 1983 found the industry viable. However, since then, DOE has found the industry to be non-viable based upon losses sustained and the ability of the industry to service the nation's demand at current prices. Interestingly, demand of the nation's utilities is now approximately 35-40 million pounds per year. Not only did DOE fail to maintain the industry's viability as required, it allowed the industry to die without complying with the congressional directive.

In 1984, several producers filed suit claiming that DOE had failed to live up to its responsibilities under the Act. In spite of DOE's efforts to delay the litigation, the District Court of Colorado ruled in favor of the producers and ordered DOE to limit the enrichment of foreign uranium. DOE appealed this adverse result to the 10th Circuit Court of Appeals and during the interim did nothing to comply with its obligation. In July, 1987, the Appellate Court upheld the District Court's order, and, once again, DOE ignored the decision and appealed to the United States Supreme Court. A decision from the United States Supreme Court is expected during the summer of 1988. This effort to force DOE to comply with the will of Congress has cost the industry in excess of one million dollars in legal fees, and, in spite of the determination of two courts that DOE has a mandatory obligation, DOE has yet to take any action whatsoever to maintain the industry's viability. Losses continue to be incurred by the industry at the rate of in excess of two hundred million dollars per year while it waits for DOE to obey the law.

The Impact of the Free Trade Agreement.

Just as uranium producers are about to achieve relief under the Atomic Energy Act, the free trade agreement was announced. During the trade negotiations, there was never any indication that uranium would be a subject of the free trade agreement; but at the final hour, the Canadian provincial and federal governments insisted that Canadian uranium be exempt from any limitation on enrichment resulting from the producers' lawsuit. Our negotiators readily agreed because the change demanded by the Canadians conveniently reversed the eight years of struggle by U.S. producers to force DOE to abide by the law. In essence, chapter nine of the trade agreement allows Canadian origin uranium to be enriched by DOE as if it were U.S. origin uranium. Canada produces approximately 33 million pounds of uranium per year and uses only 6 million pounds. Thus, the uranium provisions of the FTA represent a significant and devastating exception to the provisions of 161(v) of the Atomic Energy Act.

Chapter nine of the FTA dealing with uranium trade is important to Canada because of the substantial investments made by the federal and provincial governments over the last ten years. These investments now total nearly three billion dollars. These investments were made, not because the Canadian nuclear power program requires such levels of production; rather, they were intended to take advantage of expanding nuclear programs in the United States and the rest of the western world. The contraction in the world's nuclear power programs have caused Canada to fight that much harder to make sure that the U.S. market is not restricted.

The National Security Implications.

Congress encouraged private ownership and adopted Section 161(v) of the Atomic Energy Act because of the national security implications of the uranium industry. The uranium provision of the FTA expressly reverses twenty-four years of Congressional findings on the subject; but under the FTA, the United States will be unable to use Canadian uranium as fuel in our nuclear navy, for weapons, or as uranium metal for armor-piercing bullets. Canada's non-proliferation policies prohibit such use. The U.S. Navy has over 200 operating nuclear power reactors in its fleet. Without a viable domestic uranium industry, the United States will have to rely on uranium from South Africa for defense needs. Australia, like Canada, does not allow its uranium to be used for military purposes. While the U.S. trade representative claims there will always be a U.S. uranium industry available to service defense needs, he has no idea how weak the industry is or how great its capital needs for new mines and mills. Nor does the U.S. trade representative understand the opportunity for monopolistic behavior on the part of Canadian government producers. In the 1970's, the producers, under the direction and protection of the government, formed a cartel which set minimum prices. Under U.S. Judicial and Congressional pressure, the cartel was disbanded, but as recently as 1981, DOE concluded that its resurrection was likely. The recently announced merger between the two Canadian governmental producers portends just such a development.

Canada's Uranium Industry; Supports; Subsidies and Strategy.

Over the years, Canada has encouraged the production and upgrading of nuclear fuel. Canada's own nuclear power industry uses approximately six million pounds of uranium per year. Much of this uranium comes from the Province of Ontario where the mines are high-cost and low-grade. A significant new production center was started in the Province of Saskatchewan in the early 1980's. Much of this uranium is lower cost and available for world markets. Virtually all Saskatchewan uranium production is controlled by the federal or provincial governments. The manner in which Canada has made its investments and the way in which it supports its indigenous uranium industry gives Canadian government producers a tremendous advantage over producers in the

United States and other parts of the world. For example, the high-cost production centers are supported with contracts which pay producers in excess of $85.00 per pound. These contracts are valued at $9.7 billion (1988 dollars), have terms up to forty years and provide all of the requirements of Canada's nuclear power program. Thus, U.S. producers are unable to sell uranium to Canada and will continue to be unable to sell uranium under the FTA. This is not because there is an outright prohibition on such sales - the Canadians were not so naive; rather, they simply adopted a policy that requires the utility to have a twenty year forward supply which conveniently comes from Canada's high-cost production centers. The structure would be airtight but for the fact that these contracts can be terminated upon five years notice by the utility. Thus far, there have been no terminations even though the prices are approximately two to three times the current world market price. The government utility defends its failure to terminate the contracts on the grounds that employment at the high-cost Ontario mines is important and must be preserved and, of course, Canada has a great deal more concern for its own uranium miners than for uranium miners in the United States. Only 500,000 pounds of uranium are taken annually by the government utility from Saskatchewan; but the prices paid for this production are substantially higher than the current market price of $17.00 per pound. Here, the explanation is that such prices are required to amortize the significant investment by government corporations in the Saskatchewan mines and mills.

With respect to Saskatchewan, the premier mine which produces approximately twelve million pounds of U_3O_8 per year and approximately fifteen percent of the world demand is the Key Lake deposit. This deposit would have never been opened in the depressed market of the 1980's and thus would not impact the current market without the substantial government investment. Approximately $750,000,000 were invested to open this project. This investment was made largely by the federal and provincial governments and was cleverly done to avoid violating U.S. trade laws. Loans were obtained from commercial banks; but these loans were unconditionally guaranteed by the federal and provincial governments. When the government corporations have been unable to pay back the loans as scheduled, the loans have been refinanced, the guarantees extended and additional capital invested to pay interest and fund cash shortfalls. Such things are easy to do when the government is committed to developing natural resources. While such accommodations were being made by Canada, U.S. producers were writing off their loans and investments. DOE, of course, offered no loans and guaranteed no loans for U.S. producers.

It is these tremendous investments in government-owned uranium projects that made Canada fight so hard for the uranium provisions of the free trade agreement. Shortly after the trade agreement was announced, approximately forty Senators and Representatives wrote a letter to the President of the United States expressing their dismay at the uranium provisions of the FTA. The trade representative was then directed to return to the bargaining table and ask for a phase-out period of Section 161(v) protection much like other industries were given. The Canadians, of course, said no, and thus we are faced with a provision which will undo eight years of struggles by U.S. producers. Far better that the industry had been liquidated in 1980 when the market first collapsed than to have struggled for eight years only to be sacrificed by our trade negotiators who admitted that they did not understand the uranium industry on either side of the border. Of course, DOE is delighted with the prospects of the FTA because it will allow it to avoid the responsibilities it has so desperately tried to avoid under Section 161(v) of the Act.

Other Considerations.

Frequently, it is asked why U.S. uranium producers do not seek relief under U.S. trade laws. The answer is found in the inadequacy of U.S. trade laws which narrowly define dumping and subsidization.

Canadian and other foreign governments, which were severally criticized for engaging in the Foreign Producers Cartel in the 1970's, are not about to be caught again. Thus, they have orchestrated their investments and support in such a way as to avoid violating U.S. trade and antitrust laws. Our Trade Representative, when finally asked to evaluate this situation, concluded as much in a letter dated December 1985 to Secretary Herrington. Furthermore, the remedy for U.S. uranium producers is expressly set forth in the promise Congress made in 1964 to encourage private investment. It is this remedy which producers have pursued since 1980. The industry is now on its last legs and even if U.S. trade laws were changed, it is probably too late to salvage the large investments that have been made unless the uranium provision of the FTA is rejected.

Recommended Actions.

While all of this was transpiring, U.S. producers attempted to reach a compromise with DOE and with the nation's utilities. U.S. producers were successful with the utilities, but DOE has consistently refused to discuss the matter with either group. The compromise is set forth in Senate Bill 1846 which has been favorably reported by the Senate Energy Committee. This bill would repeal Section 161(v) of the Act and replace it with a requirement that U.S. utilities burn a decreasing percentage of U.S. uranium between now and the year 2000. Such an approach is entirely consistent with the approach taken by the U.S. trade representative with respect to other U.S. industries where past Canadian behavior required a period of adjustment. It is hoped, that S. 1846 will emerge from the Senate and be adopted as a reasonable approach to complex issues by the House of Representatives during this session. The bill is supported by producers, utilities and rate payers, and I believe it is acceptable to DOE enrichment officials. Due to the Administration's philosophy on trade, however, DOE cannot actively support S. 1846.

As the letters from the several Congressmen and Senators attached as Exhibit A hereto state, the inclusion of provisions of S. 1846 into the Canadian free trade agreement would solve the problems raised by U.S. producers. However, because of the fast track procedures under which the FTA is being considered, amendments appear to be impossible. Thus, we are forced to urge you to reject the FTA. In doing so, however, we would also urge that the negotiators be directed to return to the table to arrive at a trade agreement which adjusts for past Canadian subsidies and treats the domestic uranium industry fairly.

Conclusion.

Thank you very much for the opportunity to present testimony on an issue that has tremendous national security implications for this country and which presents a stark example of the need for a fair as well as a free trade agreement with our clever and respected friends to the North.

John R. Adams

DICK CHENEY
WYOMING

Congress of the United States
House of Representatives
Washington, DC 20515

December 9, 1987

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Uranium is now second only to coal as an energy source for electricity production in the United States, accounting for almost 20 per cent of domestic electric power generation. Use of uranium as a fuel in nuclear power plants is now displacing over two million barrels per day of imported oil, and is saving the nation $15 billion per year in foreign oil payments. Similarly, the nation continues to have a substantial reliance upon uranium for its national defense requirements.

A strong domestic uranium industry and a strong domestic enrichment enterprise are required if the United States is to ensure its ability to meet the demand for nuclear energy and its defense responsibilities. Ironically, at this critical time, both the uranium mining industry and the uranium enrichment enterprise are severely depressed. Indeed, the uranium industry has been formally declared to be "non-viable" by the Secretary of Energy. There is a broad consensus that the uranium enrichment enterprise simply cannot continue to operate as it has in the past.

In order to resolve these problems, a comprehensive program is desperately needed.

Fortunately, the uranium producers and nuclear utilities have cooperatively sought development of such a program through the legislative process. On October 1, 1987, the Senate Energy and Natural Resources Committee ordered reported S. 1846, a comprehensive bill that ensures this country's utility and defense requirements for uranium will be met. Among other things, this legislation eliminates any restriction on the enrichment of foreign uranium for domestic use. For an interim period, this restriction is replaced by imposing a sliding scale of charges for the use by utilities of foreign uranium above specified levels. All restrictions expire automatically on January 1, 2001. The bill also totally reorganizes the uranium enrichment enterprise to permit operation as a continuing, commercial enterprise on a profitable and efficient basis.

We believe the uranium supply policy embodied in this legislation is compatible with the proposed U.S.-Canadian Trade Agreement. Canada does not sell uranium to the United States for military purposes. Therefore, it is imperative that any trade agreement with Canada recognize the importance of the U.S. uranium industry to our national defense.

The legislation reported by the Committee on Energy and Natural Resources revitalizes the domestic uranium mining industry in a manner that achieves the uranium trade objectives of the agreement. The bill repeals section 161(v) of the Atomic Energy Act, which requires the Secretary of Energy to restrict the enrichment of foreign uranium.

The bill also preserves existing contracts for the purchase of foreign uranium. It imposes limited charges for the use of foreign uranium in the next few years, while preserving a substantial share of the U.S. uranium market for foreign producers. In fact, taking into account the provision respecting preservation of existing contracts, the net effect of the legislation is to preserve 50 per cent of the domestic market for imported uranium during the period of transition to a free market.

In summary, S. 1846 provides for a phased implementation of free trade in uranium. We understand that a gradual approach will also be proposed in implementing other areas of the U.S.-Canadian Agreement. We urge that in developing the Administration's proposals for implementing legislation for the uranium provisions of the Agreement, the Administration take advantage of the consensus among uranium producers, electric utilities, and Members of Congress that is reflected in the legislation reported by the Committee on Energy and Natural Resources.

Sincerely,

Dick Cheney
Dick Cheney

Tony Coelho
Tony Coelho

Dave McCurdy

John J. Rhodes

Howard Nielson

Dan Schaefer

Joe Skeen

MICKEY EDWARDS

Mickey Edwards

Wes Watkins

Wes Watkins

Bob Stump

Richard H Stallings,

Richard Stallings

Manuel Lujan, Jr.

Manuel Lujan, Jr.

James V. Hansen

Austin J Murphy

Austin Murphy

Ron Marlenee

Ron Marlenee

James Inhofe

J. BENNETT JOHNSTON, LOUISIANA, CHAIRMAN

DALE BUMPERS, ARKANSAS
WENDELL H. FORD, KENTUCKY
HOWARD M. METZENBAUM, OHIO
JOHN MELCHER, MONTANA
BILL BRADLEY, NEW JERSEY
JEFF BINGAMAN, NEW MEXICO
TIMOTHY E. WIRTH, COLORADO
WYCHE FOWLER, JR., GEORGIA
KENT CONRAD, NORTH DAKOTA

JAMES A. McCLURE, IDAHO
MARK O. HATFIELD, OREGON
LOWELL P. WEICKER, JR., CONNECTICUT
PETE V. DOMENICI, NEW MEXICO
MALCOLM WALLOP, WYOMING
FRANK H. MURKOWSKI, ALASKA
DON NICKLES, OKLAHOMA
CHIC HECHT, NEVADA
DANIEL J. EVANS, WASHINGTON

DARYL H. OWEN, STAFF DIRECTOR
D. MICHAEL HARVEY, CHIEF COUNSEL
FRANK M. CUSHING, STAFF DIRECTOR FOR THE MINORITY
GARY G. ELLSWORTH, CHIEF COUNSEL FOR THE MINORITY

United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510-6150

December 1, 1987

The President
The White House
Washington, D.C. 20500

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A strong domestic uranium industry and a strong domestic enrichment enterprise are required if the United States is to ensure its ability to meet the demand for nuclear energy and its defense responsibilities. Ironically, at this critical time, both the uranium mining industry and the uranium enrichment enterprise are severely depressed. Indeed, the uranium industry has been formally declared to be "non-viable" by the Secretary of Energy. There is a broad consensus that the uranium enrichment enterprise simply cannot continue to operate as it has in the past.

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Sincerely,

Wendell H. Ford

Pete V. Domenici

J. Bennett Johnston

James A. McClure

Jeff Bingaman

Jake Garn

Orrin G. Hatch

Don Nickles

Robert Dole

Chic Hecht

Ted Stevens

Steve Symms

Bill Armstrong

Richard Shelby

Malcolm Wallop

Alan K. Simpson

John Breaux

David L. Boren

John W. Warner

Mitch McConnell

Dennis DeConcini

John McCain

Frank H. Murkowski

Robert C. Byrd

Chairman GIBBONS. I remember Mr. Aspinall so well. He appeared before this committee one time, and I sat right over there. And we were talking about shale oil. He said, "Oh, if we can just get the price of oil up to $8 a barrel, we will flood the world with shale oil."

What is the price of oil now?

Mr. ADAMS. I don't know—$18, something like that.

Chairman GIBBONS. I don't see any flood. It looks like he set up a good protected industry, and then had the results that all protected industries had. You overproduced, you did everything else wrong, because there is no restraint on it. You know, you had a good market, and now you are coming in and saying, we have got the gout.

We have lived so well. We priced ourselves right out of the market. We don't want to get our hands dirty taking on the Canadians, accusing them of subsidy. After all, we have lived off the subsidies right up until right now, and we can't complain about it. Isn't that what has happened?

Mr. ADAMS. Mr. Chairman, we didn't intentionally overproduce. I explained the one problem——

Chairman GIBBONS. Nobody ever does that.

Mr. ADAMS. I know, but the nuclear industry and the electricity demand just didn't come on as expected. And so we were faced with large inventories. That was nobody's fault, really. That was just a fact, something that happened in the 1980's.

We were a protected industry. Those protections were phased out in the late 1970s because of the great demand that was foreseen for uranium, but they were always kept in place in the event that something like this would happen, that the industry would collapse because of cheap foreign uranium that was subsidized, that would come in and ruin our industry.

Chairman GIBBONS. Well, I have heard the same song. I have been sitting here for 20 years now. And I have heard the same song. Everybody got protection; it was great while it lasted, and we really enjoyed it. But we are sorry; we are no longer competitive now that protection is pulled away. And that looks like what has happened to you.

Mr. Aspinall represented his area of the United States very well, but you just can't beat the market. And that is what happened, it looks like.

You know, it seems to me that if we have got nothing in this agreement other than the gas part and the reduction of the tariffs, we would have gotten a good agreement.

I am sorry we can't take care of everybody. Someday I will understand the automobile part, maybe, if I live long enough and learn to speak a different language.

And I am sorry that we couldn't save the uranium industry, although I think you will probably survive, just on a smaller base.

What is the matter? Are our deposits so bad that we can't compete? Is that it?

Mr. ADAMS. Our deposits are not bad. In fact, Energy Fuels has some of the highest grade deposits ever found in the United States. And our price that we are selling uranium at now is about a break-even price. Canada is doing the same thing. They are not amortizing the capital costs that were put into those projects. If they would, the price of uranium would be $24 or $25 a pound instead of $17, and everybody would be happy.

Chairman GIBBONS. Well, you are saying that they are subsidized.

Mr. ADAMS. That is right.

Chairman GIBBONS. Well, why don't you hit them on the subsidy?

Mr. ADAMS. The subsidizations do not fall under trade law. Our trade law is narrowly defined, and they have circumvented U.S. trade law by cleverly structuring their companies.

Chairman GIBBONS. Have you ever tried a subsidy case?

Mr. ADAMS. Never have, no. We asked legal counsel about this, and were instructed that our remedy and the remedy that we should pursue is the law that was on the books. And that is the Atomic Energy Act, 161(v). And that is where we should seek relief.

And so that is what we have done for the last 4 years, and apparently some courts have agreed with us that the law says what it says, because we are about to be at the Supreme Court, and we have won every case so far.

Chairman GIBBONS. Well, you know, I was here in 1964——

Mr. ADAMS. I was wondering how you voted.

Chairman GIBBONS. I will be darned if I remember we guaranteed that you would always make a profit, always be in existence. I don't remember that at all. Now, there may have been a great discussion on the floor and I missed it. Or it may have been revised and extended, and somebody stuck it in the record.

But I will be darned if I remember any discussion that we would guarantee you that there would always be a profitable industry for you there. I just don't recall that discussion. Mr. Jones was around in those days. Do you remember anything like that?

Mr. JONES. That was before my time, Mr. Chairman. [Laughter.]

Mr. ADAMS. I would be very interested to see how you voted then, Mr. Chairman, on that Act.

Chairman GIBBONS. I probably voted for this silly thing.

Mr. BUCKLEY. It wasn't before my time, Mr. Chairman.

I think that the fundamental problem here is that the nuclear industry had great dreams and great hopes for an electric America based on nuclear energy, and it just hasn't worked. And for 10 years, there haven't been any new plants built, and most of the ones that were started before that, even when they are completed, don't go on line. And so the demand for the uranium is going the wrong way, and there is nothing, with or without this Canadian free trade agreement, that really can save that industry. It is already declined, under your testimony, 90 percent.

Chairman GIBBONS. It was kind of like Wayne's $8-a-barrel shale oil. I will just never forget that.

Well, thank you all very much. Mr. Crane?

Mr. CRANE. The only question I would have, Mr. Adams, is what percentage of domestic uranium production is purchased annually by the U.S. Government for military purposes?

Mr. ADAMS. Six million pounds a year. The total use, or the total need, in the United States is about 40 million pounds, and it is about 6 million pounds a year going forward.

Mr. CRANE. Would not that 6 million remain a constant, because of the restrictions on utilization for military purposes on the part of the Canadians and Australians?

Mr. ADAMS. I don't quite understand what you mean.

Mr. CRANE. Well, in other words, if we can't source other than domestic manufacturers for military purposes, would not that 6 million at least remain a constant as far as U.S. production?

Mr. ADAMS. It could. If the U.S. Government entered into contracts to buy 6 million pounds of U.S. uranium, that would insure that there was an industry for 6 million pounds.

Mr. CRANE. Would they not do that, in all probability?

Mr. ADAMS. I don't know.

Mr. CRANE. I mean, where else could they source?

Mr. ADAMS. Well, the only other options, which are absurd, are South Africa and Russia. Those are the only other countries that don't have nonproliferation agreements.

So I would imagine that that would be something—there is a huge government stockpile, you may or may not know. And the administration would maintain that there will always be enough uranium from that stockpile. But we maintain that a good industry is the best assurance of a supply.

Mr. CRANE. Well, it is, but it seems to me, under this free trade agreement, that there are consumer benefits on both sides of the border under FTA. I think you raise a valid point here on the military needs, but it would seem to me that we would still preserve that at any and all costs, if the alternatives were the Soviet Union or South Africa.

Mr. ADAMS. Yes.

Mr. CRANE. I thank you all for your testimony. I appreciate the support for FTA too, on the part of the rest of the panelists.

Chairman GIBBONS. Maybe you don't know, but what are we going to do with the raw material that is in those bombs when we deactivate them? Does it go back in the stockpile, or what?

Mr. ADAMS. I think they would go back to the strategic stockpile. What is used in nuclear reactors is quite a bit of a different——

Chairman GIBBONS. A different variety.

Mr. ADAMS. A different variety, by a long shot. About three percent, as compared to 95 percent, pure.

Chairman GIBBONS. You could dilute it back, couldn't you?

Mr. ADAMS. I am not sure. I am not a physicist.

Chairman GIBBONS. Well, this concludes our hearings for today. Anybody that wants to go is welcome to come up to sunny Fargo, ND, with us. [Laughter.]

When we next meet there, next week.

Thank you very much.

[Whereupon, at 4:11 p.m., the subcommittee adjourned, to reconvene at 9 a.m., Friday, March 11, 1988, in Fargo ND.]

UNITED STATES-CANADA FREE TRADE AGREEMENT

FRIDAY, MARCH 11, 1988

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Fargo, ND.

The subcommittee met, pursuant to notice, at 9:10 a.m., Cityscape Ballroom A, Radisson Hotel Fargo, Fargo, ND, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman **Gibbons**. Good morning, ladies and gentlemen.

My name is Sam Gibbons, and by virtue of my ancient age, I am the chairman of this group of Congressmen who are here today to listen to you and to discuss with you the proposed free trade arrangement with Canada.

We are going to be listening a lot and perhaps asking some questions, trying to respond to yours, if it is possible for us to do so, and I thought for your planning purposes, we would just continue this meeting on today until we get through. We may take a little coffee break or rest break around 11, but you can—we just have to see how it goes.

This is the meeting of principally members of the Ways and Means Committee, who are responsible for most of the approval or disapproval of the proposed pact.

Before I go any further, though, I just want to introduce to you a person who you already know, your own Congressman, Byron Dorgan. I remember when I first met Byron. Senator Andrews, who had been your Representative, came to Congress the same time that I did, and he—we had become fast friends, and he had already told me a lot about the State and one time under his auspices, a whole delegation of us had visited here to look over some of the farming operations.

So, this is not my first trip to your State, but Senator Andrews brought by Mr. Dorgan and I was standing on the House floor, he said,

> Here is a fine young man who has taken my place, Sam. He's an expert in raising revenue. He's bright. He's smart. He's hard-working and he's honest, and he looks like to me he ought to be a good member of the Ways and Means Committee.

Well, he proved to be all those things and he is a member of the Ways and Means Committee. He is our friend, and we are here today at his invitation to hear from you.

So, Byron, perhaps you would like to make a little statement.

Mr. **Dorgan**. Sam, thank you very much for coming today.

Let me, on behalf of the North Dakotans here, thank you and Congressman Don Pease from Ohio as well as Congressman Tim Johnson from South Dakota, who is on my left. They have come to Fargo, ND, at my invitation to discuss the free trade agreement.

I did promise Sam that there would be sunshine in Fargo, and if you will look at the side of that building, we are having sunshine ever so briefly.

Chairman GIBBONS. I appreciate it, too.

Mr. DORGAN. The free trade agreement with Canada is unique and controversial. Congressman Gibbons will probably have more influence on how this works and when it works than almost anybody in Congress because he is chairman of the Trade Subcommittee.

He has held many hearings on this subject in Washington, D.C., and I asked him if he would consider holding one hearing somewhere out in the country where there is a common border with Canada, so that we would have an opportunity to hear directly from producers and others in that region about how this agreement would affect them.

He consented to do that, and I am delighted he did. We chose coincidentally Fargo, ND, and——

Chairman GIBBONS. Do not go into that.

Mr. DORGAN [continuing]. The purpose of this hearing is to listen and to inquire.

I have indicated previously that there are some problems with the Canada free trade agreement for those of us in the agricultural sector. We need to understand exactly what those problems are, and I am hoping that Chairman Gibbons will get a better understanding today from those who oppose the agreement, why you oppose it, and what might be done to solve some of these problems, and from some of you who support the agreement, why you support it and what strengths you think it portrays.

I hope that all of us leave this hearing with a good solid understanding of what this agreement means to us because, as we attempt to write implementing legislation and perhaps create some attendant letter understandings with Canada we want to address problems.

So, Sam, I am delighted that you are here, and I hope that this will be a very productive hearing for the Ways and Means Committee and will help us write better implementing legislation.

Chairman GIBBONS. Well, I could not add but very little to what Congressman Dorgan has said.

Let me, before I make any more statements, though, introduce the rest of this panel here.

On my right is Don Pease. He is a Congressman from the State of Ohio. A member of the Trade Subcommittee, and a member of the Ways and Means Committee. One of the most diligent and intelligent workers we have. He represents a district that has been heavily adversely impacted by foreign trade, and he has represented it with great dignity.

So, Don Pease over here. Don, we will let you make a statement as time goes by.

On the left is Congressman Tim Johnson from the State of South Dakota. He is relatively new in Congress, but he comes there with a great deal of enthusiasm, and we need that enthusiasm, and we—he comes there with a great deal of background and experience in the types of problems that you face in this area.

So, we welcome him to our congressional hearing this morning.

There are others here that I perhaps ought to introduce because they will play a role and have played an important role in what is going on.

Representing the administration, the people who have negotiated this agreement, is Mr. Bill Merkin from the U.S. Trade Representative's Office.

Bill, would you stand up? It is hard to see you back here. And he is one of our resource people, and he is one of the people who you will probably be directing some of your remarks to this morning because he was the chief negotiator on the agricultural section of this.

Also with him from the Agriculture Department and our chief specialist in commodities and in the area of international negotiations and international work is Ms. Ann Veneman.

Ms. Veneman is a renowned expert in this area that we are working in today. If she looks a little droopy-eyed, it is because she has just returned from Switzerland, where she has been participating in a conference over there. She has not had a break. She has not gotten rid of the jet lag yet, but I always find her a bright and wonderful person.

So, Ann, would you stand up and please let the people see you back there?

We do not have any Republicans with us this morning. It is not a conspiracy. They just had other things that they had to do, but they sent along their representative, Meredith Broadbent, who has been a member of the Ways and Means staff for quite some time, and she will report whether or not we conducted a thorough and honest and straightforward hearing here today that she will take back to her members.

So, Meredith, would you stand up, please?

Mr. DORGAN. Might I point out that we invited Congressman Arlan Stangeland to participate this morning, but he was unable to do so. Congressman Bill Frenzel from the minority side was intending to be here. He is on the Ways and Means Committee from the Minneapolis area, and a commitment prevented him from being here as well.

Chairman GIBBONS. No lack of interest and no lack of expertise, just one of those coincidences that occurs every now and then.

Okay. Let us get down to business. This is a freer trade arrangement between the United States and Canada, not a free trade arrangement between the United States and Canada.

It is a part of a probably never-ending process that must go on between sovereign countries to work out their differences. It is not unique in American history. There are—we have other free trade arrangements, but none exactly like this and none with a country as big as Canada and important to us as Canada.

As you know, being so close to the border here, this is very controversial in Canada, and it is somewhat controversial here in the United States. We hope that when all of this is completed, we can make the necessary changes to put this agreement into operation.

If we find it cannot be done, if we find that the bad far outweighs the good in all of this, then we will just have to scrap it and go back to the bargaining table again. I would hate to see that happen. It has taken decades for us to ever get this far.

Many people have complained about the agreement, that it does not go far enough, and I would agree with them on that, but it is as far as you can drag sovereign nations being independent nations along in getting the agreement, and I think most of you are entrepreneurs, you are used to bargaining, you know you never get your way completely, even in the family household, and maybe particularly in the family household. So, these kind of things, differences, are not unusual to Americans, and I am sure they are not to Canadians.

We want to listen today and ask questions. We will have some panels. We usually wait for every member of the panel to present his or her statement, and then we will start in the questioning process.

All panel members should be assured that their written statement, if they have one, will be included in the record in full as if it were delivered. So that you do not have to worry about reading it necessarily. Some people proceed better if they read it, some proceed better if they ad lib it. You suit your own style. We are here to listen, we are here to learn.

Our first panel this morning is composed of the North Dakota Wheat Commission, Mr. Watson is the chairman; the Minnesota Association of Wheat Growers, Mr. Noel Kjesbo; and the U.S. Durum Growers Association, Mr. William Ongstad.

Would you come forward and take your seats? We are missing one person. Maybe I slaughtered his name so badly that he did not recognize it. Here he comes. Fine.

We will just go as they are recognized here on the panel, and you all, if you would, move those microphones around. One is a recording microphone and the other one is a public address microphone. So, I warn my colleagues that we are live all the time and if we whisper anything, it is going to be recorded.

Go right ahead, Mr. Watson.

STATEMENT OF CECIL WATSON, CHAIRMAN, NORTH DAKOTA WHEAT COMMISSION

Mr. WATSON. Mr. Chairman, members of the committee, my name is Cecil Watson. I am a Spring wheat farmer from northeast North Dakota, about 12 miles from the Canadian line, and I represent today the North Dakota Wheat Commission, a market development organization for wheat in North Dakota, the North Dakota Wheat Producers, and the National Association of Wheat Growers.

And I would like to say at the outset that we have been following this very closely for the last 2 years. In fact, 2 years ago, we met with Ambassador Clayton Yeutter in Washington, DC, at a National Association of Wheat Growers meeting and were told that when these negotiations are completed, we will have a level playing field, and awhile later, we were told that agriculture was probably not going to be a part of this agreement and we were told not to worry because our systems are entirely different and they would not be compatible in a free trade agreement.

So, we kind of did not think too much about it for a year, and then, all of a sudden, we have an agreement and we are a part of it. Now, we realize that Spring wheat and Durum in the national scene and as part of the whole trade agreement is a very small part, but in North Dakota, that is all we have got, is Spring wheat and Durum, for the bulk of the State and that is where most of our income comes from.

Now, as far as free trade agreements are concerned, the wheat producers are very much in favor of free trade, and we have benefited greatly from free trade around the world over the last number of years, and we realize that the free trade agreement will benefit other sectors of the economy as well. So, it is not the free trade agreement that we are opposed to, especially; it is the manner in which the agreement was designed and how it affects us directly.

For example, the Canadian wheat farmer, through several methods, can deliver wheat into North Dakota or to the border States right now, and realize a profit on it. We cannot do that into Canada. They have a licensing system and their borders are closed to us.

So, we feel this is a gross error in the agreement. We do not even have access to their borders. We feel that the subsidies as they were talked about, the PSEs, as they call them, and the negotiations as they derived them were not fairly done. The U.S. wheat farmer gives up a large percentage of his wheat acres in order to participate in a subsidy program. The Canadian farmer does not.

The U.S. wheat farmer has to buy his own health insurance. The Canadian wheat farmer has socialized medicine. We feel this is a subsidy. The Canadian wheat farmer has a very low rail rate going east. They have given up their westbound rail rates, but going east, they have a very low rail rate and this is where the wheat is coming into the United States, and we feel that for every million bushels of wheat that comes into the United States, when we are sitting in a surplus situation as we are, that is another million bushels the U.S. taxpayer has to pay storage on, either on somebody's farm or in a commercial warehouse.

So, we feel that the U.S. taxpayers right now subsidize the Canadian wheat farmer.

As we take a look at our programs, when I sign into a farm program, I sign a contract and that is a binding contract, and that expires for me or that is—the final date for that is April 16 or April 15. If the price of wheat would happen to go up, I could not change my plans. Canadian spring wheat farmer has a month or 6 weeks to change his plans. He could increase his acreage, and, in fact, whenever we have cut our acreage to try to reduce surpluses, the Canadian wheat farmers have increased their acreages to compensate for that.

The subsidies that we receive, some, of course, in the form of direct payment, as well they do, but some of our subsidies are in the form of storage payments. These storage payments, in fact, took grain off of the market and allowed the market price to increase and, therefore, increased the market price for Canadian farmers as well.

We have a much larger population than the Canadians do. They export a large percentage of their wheat. They are very anxious to get into our markets. I have talked and visited with Canadian farmers. They think that this is going to be the best thing that ever happened to them, and I agree, it probably will be.

We pay premiums for Spring wheat in Minneapolis grainage chains. The Canadian Wheat Board does not pay premiums to near the extent that we do. They use them for a pawn in their export market to further their exports in places that, in fact, we deal in.

Another thing I think that has probably not been negotiated is the differences in pesticides. We are faced with an Endangered Species Act. The Canadian wheat farmer can use chemicals that I cannot use, yet we are going to open up the border and say you can bring your wheat into North Dakota or into the United States and, you know, I am faced with the fact that maybe the Environmental Protection Agency will say, well, you cannot use these chemicals at all in the United States.

There is a large—there are some very gross inequities, I think, in the program.

I would like to speak a little bit about the Canadian Wheat Board. I asked one of the people in the trade office that spoke at the National Association of Wheat Growers, what did you negotiate for in differences in the function of the Canadian Wheat Board, and he said, "Well, we didn't negotiate for any differences."

The Canadian Wheat Board has a monopoly on wheat. They control all the wheat in Canada, and, so, our free trade system, where we have to have—our private grain system, where we have to make a market in every transaction, has to compete with an organization that has a monopoly on wheat. We do not think this is fair.

Since our borders are essentially closed to U.S. wheat going into Canada and our borders will be primarily opened to wheat coming into the United States, we think that there has got to be some other changes in the agreement so that it becomes fair to both sides.

The other thing we are thinking about is the GATT negotiations going on right now. If this trade agreement with Canada is any indication of what they are going to negotiate for us in GATT, we feel like we are, you know, in a hurt situation.

The U.S. wheat producers, even though there are methods of settling trade disputes between nations, the track record for these types of disputes has not been very good. We have not seen 301 complaints, for example, have provided very little relief in cases where they drag on for years and they never seem to be resolved.

The other thing in the 1933 Agricultural Adjustment Act, we had a section 22. Section 22 was provided so that in case there was a dumping of grain from another country into our country, that we could essentially close the borders until whatever problems there were, were resolved, and as we understand the free trade agreement with Canada, as it has been negotiated now, we essentially lose the workings of section 22, and we would like to see language added to the agreement so that we could continue to use section 22 in case there was a dumping of wheat into our markets by a foreign country.

Then, in closing, I would just like to add, you know, the news coming out of Washington, DC, and the Agriculture Department is that things have turned around in agriculture, and I agree that they are starting to swing the other direction. Things are looking better for agriculture, but you do not change the situation that developed over 10 or 12 years in 1 year or 2 years, and I think when things just happen to be turning around for us on the farm, it would be a disaster for us to get into an agreement that would certainly turn it the other way for us again.

Thank you.

[Statement of Mr. Watson follows:]

NORTH DAKOTA
WHEAT COMMISSION

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Statement of Cecil Watson
North Dakota Wheat Commission
before the U.S. House of Representatives Committee on Ways and Means,
Subcommittee on Trade
on the Canadian Free Trade Agreement

March 11, 1988, Fargo, ND

Mr. Chairman, my name is Cecil Watson and I am chairman of the North Dakota Wheat Commission. I am a farmer from Cavalier, North Dakota and today I am testifying on behalf of the North Dakota Wheat Commission and also for the North Dakota Wheat Producers and the National Association of Wheat Growers. I want to say first of all that I appreciate the sub-committee coming to North Dakota to hear our citizens concerns about the U.S./Canada Free Trade Agreement and also that I appreciate the efforts of our congressman Byron Dorgan in working with us and our Washington staff to try to work out the problems we have with the FTA in its present form.

In the brief time I have, I would like to make several points.
1. There are substantial differences between the U.S. and Canadian wheat marketing and support systems that have been in place for many years before the FTA was ever considered. The U.S. border is and has long been much more open to wheat imports than is the Canadian border. Upon payment of a 21 cent per bushel tariff, wheat from Canada can move rather easily into this country, and in recent years U.S. companies have imported growing amounts of Canadian wheats due to price and other economic factors that have made it attractive to do so. In contrast, the Canadian border is for the most part closed. The Canadian government almost totally restricts wheat imports from the United States or other countries with a strict licensing system.

Inside the borders of the two countries the methods used to price and merchandise wheat also vary considerably. In Canada the Canadian Wheat Board (CWB) is charged with responsibility of marketing the wheats produced by Canadian farmers. It is a government monopoly or state trader that aggressively uses the competitive pricing advantages it has under its monopoly status. In contrast, in the U.S., exporting is done by numerous private and cooperative grain exporting companies which also makes the pricing processes in the two countries much different.

Canadian producers receive an initial payment at the beginning of the crop year and a final payment after the marketing year has ended (both from the CWB) if the market warrants (after cleaning, handling and other CWB charges are taken out of export sales proceeds). In comparison, most U.S. producers receive a cash price from a local elevator based on current market factors plus a government deficiency payment which is earned by setting aside an established percentage of base acreage.

In recent years the U.S. cash market price for spring wheats has been stronger due to significant protein premiums, which are a market response to relatively short supplies of protein wheats. U.S. durum prices have also been stronger due to smaller crops, improved exports and sharply reduced U.S. carryover stocks. A year ago in May, U.S. cash spring wheat prices ranged from $2.90 to $5.70 per bushel from the low to the high end of the premium scale on the Minneapolis cash market. At that time the price available to U.S. spring wheat producers with high protein wheat was more than $2.00 per bushel higher than the price available to Canadian producers with comparable wheat. Under the Canadian pricing system, producers have not been rewarded for high protein wheat to the extent that U.S. producers have in recent years.

Transportation subsidies are another feature of Canadian policy that has a major effect on the exportation and price of Canadian wheats. When Canadian wheat travels from the production area through Thunder Bay on its way to export markets including the United States, it benefits from preferential rail rates that amount to a subsidy of about $17 per metric ton or about $.50 per bushel in U.S. currency.

Although North Dakota wheat producers grow primarily the same wheats as those produced by their Canadian counterparts, that is hard red spring and durum wheats, the cost of transporting a bushel of Canadian wheat or durum from western production regions to Thunder Bay is about 15 cents per bushel. A similar move from the U.S. production area in North Dakota to Duluth/Superior costs about 55-75 cents per bushel depending on the distance from the origin of the wheat to the terminal market and the type of rail service used to transport it. This rate differential along with protein premiums and other current market factors which further widen the differences in prices of Canadian and U.S. wheats, makes Canadian wheats more economical for mills located in the Eastern U.S. than comparable spring wheat or durum from North Dakota.

2. There is a lack of balance in the provisions of the FTA where wheat is concerned. Since the analysis of comparative producer subsidies employed by the terms of the agreement makes it appear that support levels are higher for U.S. producers, Canada is allowed to keep its import licensing system in place for at least the next several years. That will effectively keep U.S. wheats out of Canada, at least until it is determined that at some point producer subsidies on both sides of the border have become equal. However, on the U.S. side, the corresponding changes in the U.S. Section 22 Import Restraint Law go into effect immediately, reducing the restrictions on Canadian wheat exports to the U.S. by weakening the ability of the U.S. to impose quotas or increase tariffs at the border. The U.S.

agrees not to use export subsidies to sell wheat to Canada which is not likely to occur anyway since Canada's comparatively small population offers a much smaller market opportunity for U.S. wheat producers than the U.S. offers Canadian producers in market potential. However, at the same time Canada retains the right to use its preferential eastbound rail rate subsidies to sell wheat to U.S. companies.

Comparative producer subsidies are a delicate issue and the formula for analysis in the FTA points to producers on the U.S. side of the border as being more highly subsidized. This may be a misrepresentation since Canadian producers have also benefitted from U.S. farm programs right along with U.S. producers. U.S. acreage reduction, storage and price support programs have also provided a considerable subsidy for Canadian producers. In canada, producers also face less restrictions in the use and application of pesticides and herbicides used in crop production that provides additional competitive advantage in wheat pricing that is not measured by the producer subsidy equivalency formula in the FTA.

3. There is very real potential for significant future increases in Canadian spring wheat and durum shipments to the United States under this setting with the current differences in transportation costs and in wheat prices in the U.S. and Canada . The trend of Canadian wheat imports into this country has already been growing rapidly in recent years. Although it may not appear to be a large quantity in relation to the total U.S. wheat market, this year's expected influx of Canadian durum amounts to about 10 percent of this year's U.S. domestic durum consumption. With carryover stocks of Canadian durum increasing substantially in the past two years, our fear is that Canadian durum and wheat shipments to the U.S. will expand substantially in the near future since the terms of the FTA call for considerable reductions in U.S. leverage at the border. It is not hard to think of how that might happen.

Suppose the Canadian dollar continues to weaken against the U.S. currency creating an even larger natural advantage for Canadian wheat to move to U.S. destinations; the Canadian transportation subsidies remain in place further boosting competitiveness above what would exist in a free market; the U.S. market system continues to pay premiums for high protein wheat while the administered pricing system in Canada does not provide as great a reward for high protein wheat to Canadian producers and U.S. durum stocks continue to trend lower while Canadian stocks continue to grow.

Finally, suppose the Canadian Wheat Board is less restrained in its marketing and pricing policies because the threat or leverage of Section 22 import limits, which has acted as a brake on import levels in the past, is less visible under the FTA. Under this scenario there is a natural incentive for Canadian producers to try to sell on the U.S. side of the border if they can, or for U.S. companies to purchase increasing quantities of Canadian wheats as long as the Canadian Wheat Board issues the necessary export licenses.

4. Under terms of the FTA the Canadian Wheat Board would have a much greater degree of control over how much wheat flowed into this country from Canada. The CWB can use differentially low pricing to

increase export sales to the U.S. as it has done in numerous countries around the world, where the U.S. and Canada already compete for market share. The Canadian Wheat Board could also allow individual Canadian farmers along the border to export in order to benefit from U.S. protein premiums or higher comparative durum prices that exist in the current market setting.

On the other hand the board might arbitrarily continue to exercise some restraint and if that happens imports might stay at a level somewhere near that of the current marketing year. However, if our Section 22 import limits appear to be a less visible threat, the Canadian Wheat Board's incentive for restraint would be diminished considerably. The resulting influx of Canadian wheat would dilute the pricing opportunities U.S. producers have themselves helped to create by participating in farm programs and expanding markets through promotional efforts.

5. For all of these reasons there should be some clarification of several provisions of the FTA which at present are unclear, especially those that concern Section 22 provisions. It is clear that the U.S. did not completely give up the right to use Section 22 against Canada. It is equally clear, however that there is a new condition on the use of this statute. Under provisions of the FTA, for Section 22 to be invoked to limit imports of Canadian grains, there would have to be a "significant increase" in imports resulting from "substantial change" in the support programs of either Canada or the United States.

Mr. Chairman, our continued ability to invoke Section 22 and the leverage that ability implies is probably the most crucial factor in whether the FTA turns out to be a source of serious harm to U.S. wheat producers. Even with Section 22 there is no iron clad guarantee against an increased in flow of Canadian wheat--wheat that is benefitting from those 50 cent per bushel transportation subsidies and other factors which provide competitive advantages. If Section 22 were to be so weakened that it was no longer a visible threat, then the FTA could easily turn out to be a disaster, particularly for spring wheat and durum producers in the United States.

I am not an expert on the procedures for approving trade legislation but I know that the text of the FTA is not up for renegotiation and that once a bill is introduced to implement it under "fast track" provisions you have an up or down vote without amendments. Even with those constraints though I believe there are ways to clarify the FTA's provisions on Section 22 and several other points without actually violating the text of the agreement. This could be done as the language of the agreement in its present form is transformed into the bill that implements the FTA and in legislative history.

In closing, Mr. Chairman, anything you and other members of the sub-committee can do to help clear up these unresolved points in our favor will be very much appreciated. This is an extremely important issue for farmers in North Dakota and across the nation. I would be happy to try to answer questions pertaining to our statement on the FTA.

Chairman GIBBONS. Thank you, sir. And, now, the Minnesota Association of Wheat Growers.

STATEMENT OF NOEL KJESBO, FIRST VICE PRESIDENT, BOARD OF DIRECTORS, MINNESOTA ASSOCIATION OF WHEAT GROWERS

Mr. KJESBO. Mr. Chairman, we of the Minnesota Association of Wheat Growers would like to echo Byron's appreciation to you for bringing your committee to the upper Midwest. We feel it an honor that you would join us in our part of the world.

We were a little concerned about the weather. There was some potential snow storms brewing. We want you to know, though, that contrary to what you may have heard, we do not really have 12 months of winter in Minnesota, but we have a 10-month winter and 2 months of road under construction. That is the extent of our season.

Mr. Chairman and committee members, I appreciate having the opportunity of appearing before you today to discuss the basic reasons of our position on the proposed free trade agreement, hereafter I will refer to as the FTA, between the United States and Canada.

I am Noel Kjesbo, a wheat, soybean, barley, sugarbeet and corn farmer, from Wendell, Minn., currently serve as the first vice president on the board of directors of the Minnesota Association of Wheat Growers.

In the interest of time, Mr. Chairman, I will only attempt to summarize my remarks but will, with your approval, submit the complete text of my testimony for the record.

Chairman GIBBONS. Yes, sir.

Mr. KJESBO. It is important to note that while we have fundamental differences with those individuals that believe the proposed agreement will not harm U.S. wheat producers, we remain interested in pursuing a framework for trade and agricultural commodities that is based on true fairness and balance. This holds true in both bilateral and multilateral negotiations. However, the proposed agreement does little to eliminate several advantages that Canadian wheat farmers enjoy in the existing wheat trade situation. Consequently, unless there are significant modifications to the agreement, which appears unlikely given the fast track status the agreement has been given by the Congress, Minnesota wheat farmers have little choice but to oppose ratification of the agreement.

Our position to the proposed agreement is based on several factors. Overall, however, we are fundamentally opposed to any free trade agreement that does not require the reduction or elimination of trade barriers and export subsidies in an equitable manner by both parties. In this instance, Canada has gained literally unimpeded access to the U.S. market, while, as Cecil indicated, while U.S. wheat farmers stand little to gain if the agreement is ratified in its original form.

There are essentially three elements of the agreement that we believe are on balance in favor of the Canadian wheat farmer. It is our understanding that the United States and Canadian officials agreed during the negotiations that only export subsidies would be considered for discussion under the agreement. The forum for discussion of domestic subsidies, it was agreed, would be the general agreement on tariffs and trade in Geneva. It was agreed by U.S. negotiators, for example, that the export enhancement program would not be used to export wheat to Canada.

The Canadians' concessions in the area of export subsidies was to discontinue use of the so-called Crow's Nest rail transportation subsidy for wheat exported from Western Canadian imports into the United States.

However, a review of existing data reveals this concession to be meaningless inasmuch as Canadian wheat has never entered the United States through western ports in sizable quantities.

Most Canadian wheat entering the United States, a volume which reached almost 400,000 metric tons last year, does so through eastern ports, such as Thunder Bay. You can understand why we were upset after learning that utilization of the rail subsidy for wheat transported to the eastern port of Canada could continue in the proposed FTA. This development will follow—I am sorry—will allow Canadian wheat farmers the opportunity to compete directly with Minnesota wheat producers for domestic markets in the eastern United States at heavily subsidized prices.

A rough breakdown of the numbers, Mr. Chairman, are, of the 400,000 that entered the United States in 1987, roughly 227,000 came through the St. Lawrence ports, roughly a 110,000—I am sorry—St. Lawrence ports, roughly a 110,000 came through Thunder Bay, leaving a grand total of only 56,000 tons, roughly, coming into the United States through western ports.

I have a father-in-law, Mr. Chairman, who resides in Clearwater, FL, that has a saying about things like this. His saying is, "The negotiation, the concession by the Canadians on the Crow's Nest of the western ports was similar to the gentleman who offered the sleeves out of his vest to his best enemy." We think the Canadians gave the sleeves out of their vest to Minnesota wheat producers.

Under the proposed agreement, the import licensing system operated by the Canadian Wheat Board shall remain operational. Such a monopoly effectively bans all imports of wheat from the United States, thus protecting domestic Canadian markets for Canadian wheat farmers. It is true that Canada would have to terminate the system if support levels in both countries were determined to be equal.

However, under a new method of determination of support levels, called PSEs or producer subsidy equivalents, it is almost certain that U.S. support to wheat producers will be deemed higher than Canada's. Consequently, the import controls are likely to be removed soon and the United States will remain locked out of their market.

It is specified in the agreement that unless significant changes occur in the grain support program, quantitative restrictions will not be imposed on imports. This essentially will exempt Canada from section 22 import quotas or fees because, as referred to earlier, it is unlikely that their support levels will ever be viewed as equal, using the existing PSE mechanism.

While it may be possible to seek relief from unfair practices through other sectors of existing trade law, these efforts are seldom, if ever, successfully completed in reasonable time. Moreover, the financial costs of undertaking such an effort can be extremely high and will have to be borne by U.S. wheat producers.

One of our major disappointments has been the unwillingness of U.S. Government officials to even slightly acknowledge that the wheat provisions of the agreement favor Canadian farmers. This is especially true when we read such claims by Canadian Government officials.

For example, in a December 4, 1987, edition of a publication of the Alberta Wheat Pool, Canadian Grains Minister Charles Mayer urged Alberta Pool delegates to "support the free trade agreement because it will open up major new markets for grain and oil seeds", and "the United States is also Canada's 15th largest wheat customer and that market should expand because of the superior quality of Canada's wheat."

Now, inasmuch as very little Canadian wheat imported into the United States last year graded No. 1 and the milling and baking characteristics of U.S. wheat are equal to those grown anywhere in the world, we would certainly challenge Mr. Mayer's remarks about wheat quality.

However, we would not challenge the fact that Canadian wheat farmers will have improved access to the U.S. market under the proposed agreement.

Just last week, a major U.S. news service reported that a newly released Canadian Government report predicted a rise in agricultural exports if the FTA is ratified. The report stated that:

> Canadian farmers will benefit from increased and secure export markets if the United States-Canada Free Trade Agreement is implemented. While short on specific predictions for the various ag. sectors, the report said there would be opportunities to sell additional high-quality wheat to the United States.

This issue, Mr. Chairman, is a concern of all U.S. wheat farmers, but it is of particular concern to Minnesota wheat producers. In its present form, the agreement will undoubtedly provide Canadian farmers improved access to major U.S. markets. Markets, I would like to emphasize, that traditionally use a significant volume of Minnesota-grown spring wheat.

The real threat could be a permanent presence in U.S. domestic markets at a volume significantly larger than last year's level. You will recall that the Canadian Government report cited earlier described benefits of the FTA as "increased and secure export markets in the United States".

This could essentially institutionalize a Canadian position in U.S. markets at the expense of Minnesota wheat farmers.

In addition to competing for U.S. markets, the problem will be exacerbated by the physical presence of Canadian wheat in our U.S. marketing system. The Canadian wheat exported to the United States will not move through an isolated transportation and handling system. This grain will compete directly with U.S. grain for access to transportation, handling and lifting facilities.

Because of Minnesota's proximity to major markets and our handling facilities on Lake Superior and the Mississippi River, it is likely that significant quantities of Canadian wheat could move through our State. Some observers even suggest that Canadian wheat moved into the United States could find its way into U.S.

cargoes sold to foreign destinations through our export enhancement program.

Mr. Chairman, that would be the final irony. Canadian subsidized wheat into their eastern ports under the U.S. allowed subsidy through the FTA being resubsidized by the American government for export.

Minnesota wheat farmers have long competed with Canadian wheat farmers for export markets. However, for the most part, our wheat has not been exported under mechanisms, such as the export enhancement program, because of the U.S. Government's unwillingness to anger Canadian officials.

Supposedly, prior to the EEP, only the European Economic Community was guilty of utilizing subsidies to move wheat into export channels. A claim, by the way, that we would dispute.

Only in recent months have exports of hard Red Spring under the EEP increased. Prior to December 1987, only 850,000 metric tons of hard Red Spring wheat were exported under the export enhancement total, out of a grand total of just over 23 million metric tons of wheat generally.

Consequently, hard Red Spring wheat prices have been pressured for some time due to low export volume. Quite possibly, the only major drawback of the export enhancement program is the influence of foreign policy considerations in the awarding of the export bonus.

I do not cite these examples in an effort to criticize the export enhancement program. On the contrary, we are very supportive of the program as a mechanism to improve U.S. competitiveness. However, in recent years, we have lost market shares in countries, such as Venezuela, Indonesia, and several Western European nations, to Canadian wheat.

Now, Minnesota wheat farmers are being asked to relinquish domestic markets to Canadian farmers not on the basis of a superior product at competitive prices determined by the marketplace, but through the use of transportation subsidies provided for in an agreement negotiated by U.S. Government officials.

As was mentioned earlier in my testimony, Minnesota wheat producers are not opposed to a bilateral trade agreement with Canada simply to resist movement in that direction. Our opposition stems from our firm belief that the wheat provisions of the proposed agreement are flawed and unbalanced in the favor of the Canadian wheat producer.

We understand the importance administration officials place on the negotiations of a bilateral accord with Canada as a precursor to successful multilateral trade negotiations under the auspices of GATT. While we may share some of these beliefs, we do not, however, believe that successful completion of the Uruguay round is entirely contingent upon such a questionable demonstration of cooperation between the United States and Canada.

In fact, when considering the center piece of the U.S. position in Geneva, it is the elimination of direct and indirect export subsidies. Can we truly expect success there when the United States chooses to ignore such issues in the proposed FTA?

Mr. Chairman, I believe my comments today represent fairly the views of the majority of Minnesota wheat farmers on this issue.

Thank you once again for the opportunity of appearing at the hearing today. I will attempt to answer any questions you or the other committee members have at the appropriate time.

Thank you.

[Statement of Mr. Kjesbo follows:]

STATEMENT ON PROPOSED
U.S. - CANADA FREE TRADE AGREEMENT

By Noel Kjesbo

First Vice President
Board of Directors
Minnesota Association of Wheat Growers

Before

Select Members
of the
Subcommittee on Trade
Committee on Ways and Means
United States House of Representatives

On

March 11, 1988

Mr. Chairman and Committee members. I appreciate having the opportunity of appearing before you today to discuss the salient issues of our position on the proposed Free Trade Agreement (FTA) between the United States and Canada. I am Noel Kjesbo, a wheat, soybean and sugar beet farmer from Wendell, Minnesota, and currently serve as the First Vice President on the Board of Directors for the Minnesota Association of Wheat Growers. In the interest of time, Mr. Chairman, I will only attempt to summarize my remarks, but will, with your approval, submit the complete text of my testimony for the record.

It is important to note that while we have fundamental differences with those individuals that believe the proposed agreement will not harm U.S. wheat producers, we remain interested in pursuing a framework for trade in agricultural commodities that is based on true fairness and balance. This holds true in both bilateral and multilateral negotiations. However, the proposed agreement does little to eliminate the several advantages Canadian wheat farmers enjoy in the existing wheat trade situation. Consequently, unless there are significant modifications to the agreement, which appears unlikely given the "fast track" status the agreement is under in the Congress, Minnesota wheat farmers have little choice but to oppose ratification.

Our opposition to the proposed agreement is based on several factors. Overall, however, we are fundamentally opposed to a "free trade agreement" that does not require the reduction or elimination of trade barriers and export subsidies in an equitable manner by both parties. In this instance, Canada has gained literally unimpeded access to the U.S. market, while U.S. wheat farmers stand to gain little if the agreement is ratified in its original form.

There are essentially three elements of the agreement that we believe are unbalanced in the favor of Canadian wheat farmers. It is our understanding that U.S. and Canadian officials agreed during the negotiations that only export subsidies would be considered for discussion under the agreement. The forum for discussion of domestic subsidies, it was agreed, would be General Agreement on Tariffs and Trade negotiations in Geneva. It was agreed by U.S. negotiators, for example, that the Export Enhancement Program would not be used to export wheat to Canada. Of course, even from the beginning it was never encouraged to utilize the program for this purpose. The Canadian concession in the area of export subsidies was to discontinue use of the "Crows Nest" rail transportation subsidy for wheat exported from western Canadian ports. However, a review of existing data reveals this concession to be meaningless inasmuch as Canadian wheat has never entered the U.S. through western ports in sizeable quantities. Most Canadian wheat entering the U.S., a volume which reached almost 400,000 metric tons last year, does so through eastern ports such as Thunder Bay. You can understand why we were nonplussed after learning that utilization of the rail subsidy for wheat transported to the eastern port of Canada could continue. This development will allow Canadian wheat farmers the opportunity to compete directly with Minnesota wheat producers for domestic markets in the eastern United States, at heavily subsidized prices.

Considering the relative populations of both countries, utilization of wheat in Canada will never equal that of the United States. As such, even under fully relaxed trade negotiations, Canada will never constitute a significant export market for Minnesota wheat farmers. However, our ability to compete for that market should not be predetermined through negotiated provisions of a trade agreement if the other party is not subjected to similar restrictions. Under the proposed agreement, the import licensing system operated by the Canadian Wheat Board shall remain operational. Such a monopoly effectively bans all imports of wheat from the United States, thus protecting domestic Canadian markets for Canadian wheat farmers. It is true that Canada would have to terminate the system if "support levels" in both countries were determined to be equal. However, under a new method of determination of "support levels" called producer subsidy equivalent (PSE), it is almost certain that U.S. support to wheat producers will be deemed higher than Canada's. Consequently, the import controls are unlikely to be removed soon and the U.S. will remain locked out of this market.

It is specified in the agreement that unless significant changes occur in the grain support programs, quantitative restrictions will not be imposed on imports. This essentially will exempt Canada from Section 22 import quotas or fees because, as referred to earlier, it is unlikely their support levels will ever be viewed as equal using the PSE mechanism. While it may be possible to seek relief from unfair practices through other sectors of existing trade laws, these efforts are seldom, if ever, successfully completed in reasonable time. Moreover, the financial cost of undertaking such an effort can be extremely high and will have to be borne by U.S. wheat farmers.

One of our major disappointments has been the unwillingness of U.S. government officials to even slightly acknowledge that the wheat provisions of the agreement favor Canadian farmers. This is especially true when we read and hear such claims by Canadian government officials. For example, in a December 4, 1987 edition of a publication of the Alberta Wheat Pool, Canadian Grains Minister Charles Mayer urged Alberta Pool delegates.

> ".....to support the Free Trade Agreement because it will open up major new markets for grain and oilseeds.
>
> ......The U.S. is also Canada's 15th largest wheat customer and that market should expand because of the superior quality of Canada's wheat."

Now, inasmuch as very little Canadian wheat imported into the U.S. last year graded No. 1 CWRS, and the milling and baking characteristics of U.S. wheat are equal to those grown anywhere in the world, we would certainly challenge Minister Mayer's remarks about wheat quality. However, we would not challenge the fact that Canadian wheat farmers will have improved access to the U.S market under the proposed agreement.

Just last week a major U.S. news service reported that a newly released Canadian government report predicted a rise in agricultural exports if the FTA is ratified. The report stated that, ".....Canadian farmers will benefit from increased and secure export markets if the U.S. - Canada Free Trade Agreement is implemented. While short on specific predictions for the various agricultural sectors, the report said there would be opportunities to sell additional high quality wheat.....to the U.S."

This issue, Mr. Chairman, is a concern of all U.S. wheat farmers; but, it is of particular concern to Minnesota wheat producers. In its present form, the agreement will undoubtedly provide Canadian farmers improved access to major U.S. markets. Markets, I would like to emphasize, that traditionally use a significant volume of Minnesota grown wheats. The real threat could be a permanent Canadian presence in U.S. domestic markets at a volume significantly larger than last year's level. You will recall that the Canadian government report cited earlier described benefits of the FTA as ".....increased and secure export markets in the U.S......" This could essentially institutionalize a Canadian position in the U.S. markets at the expense of Minnesota wheat farmers.

In addition to competing for U.S. markets, the problem will be exacerbated by the physical presence of Canadian wheat in the U.S. marketing system. The Canadian wheat exported to the U.S. will not move through an isolated transportation and handling system. This grain will compete directly with U.S. grain for access to transportation, handling and lifting (export) facilities. Because of Minnesota's proximity to major markets, and our handling facilities on Lake Superior and the Mississippi River, it is likely that significant quantities of Canadian wheat could move through our state. Some observers even suggest that Canadian wheat moved into the U.S. could find its way into U.S. cargoes sold to foreign destinations through the Export Enhancement Program.

Minnesota wheat farmers have long competed with Canadian wheat farmers for export markets. However, for the most part, our wheat has not been exported under mechanisms such as the Export Enhancement Program because of the U.S. government's unwillingness to anger Canadian officials. Supposedly, prior to EEP, only the European Economic Community was guilty of utilizing subsidies to move wheat into export channels -- a claim we would dispute. Only in recent months have exports of Hard Red Spring wheat under EEP increased. Prior to December 1987 only 850,000 metric tons of HRS wheat were exported under EEP out of a total of 23.0 million metric tons. Consequently, HRS wheat prices have been pressured for some time due to low export volume (The May futures contract on the Minneapolis Grain Exchange was priced this week at a 12 cent discount to similar contracts at exchanges in Chicago and Kansas City.) I do not cite these examples in an effort to criticize the Export Enhancement Program. On the contrary, we are very supportive of the program as a mechanism to improve U.S. competitiveness. However, in recent years we have lost market shares in countries such as Venezuela, Indonesia, and several western European nations to Canadian wheats. Now, Minnesota wheat farmers are being asked to relinquish domestic markets to Canadian farmers; not on the basis of a superior product at competitive prices determined by the marketplace, but through the use of transportation subsidies provided for in an agreement negotiated by U.S. government officials.

As was mentioned earlier in my testimony, Minnesota wheat producers are not opposed to a bilateral trade agreement with Canada simply to resist movement in that direction.

Our opposition stems from our firm belief that the wheat provisions of the proposed agreement are flawed and unbalanced in the favor of Canadian wheat farmers.

We understand the importance administration officials place on the negotiation of a bilateral accord with Canada as a precursor to successful multilateral trade negotiations under the auspices of GATT. While we may share some of these beliefs, we do not, however, believe that successful completion of the Uruguay round is entirely contingent upon such a questionable demonstration of cooperation between the U.S. and Canada. In fact, when considering the centerpiece of the U.S. position in Geneva is the elimination of direct and indirect export subsidies, can we truly expect success there when the U.S. chooses to ignore such issues in the proposed FTA?

Mr. Chairman, I believe my comments today represent fairly the views of the majority of Minnesota wheat farmers on this issue. Thank you for the opportunity of appearing at this hearing today. I will attempt to answer any questions you, or the other committee members, may have at the appropriate time.

Chairman **Gibbons**. Thank you, sir. Mr. Ongstad.

STATEMENT OF WILLIAM ONGSTAD, PRESIDENT, U.S. DURUM GROWERS ASSOCIATION

Mr. **Ongstad**. Thank you, Mr. Chairman, members of the committee.

My name is Bill Ongstad. I am president of the U.S. Durum Growers Association.

Durum is the class of wheat that is milled into semolina and then it becomes pasta, and it is grown predominantly in the upper three States here next to Canada, about 80 percent in North Dakota, and we are upset with what the Canadian Wheat Board has been doing while the free trade negotiations have been going on.

Both the United States and Canada are surplus producers of Durum. The United States, on an average, has produced about a 120 million bushels, about half is used domestically and about half is exported. Canada, on the other hand, has traditionally produced about 80 to 90 million bushels, but the last 2 years, Canada has increased their production to a 143 million and a 150 million bushels, while the United States has cut back to about 100 million bushels over the last 2 years.

While Canada has been negotiating this FTA, the Canadian Wheat Board has been laying the groundwork to dump Durum on the large U.S. domestic market. U.S. producers have no chance to sell to Canada because of the variety licenses, import licenses, and end use certificates, which the Canadian Wheat Board will not grant and they are not forced to change their practices under the agreement.

And, additionally, most of the Durum processing industry in the continent is in the United States.

From a 5-year average of 37,000 bushels of Canadian Durum exported to the United States, their exports to us have increased to the last full crop year, which is August 1, 1986, to 1987, 2.3 million bushels, and since last August 1, 1987 until February 14, the total has been 4 million bushels. This is already 8 percent of the U.S. domestic market with half of their marketing year to go.

Just from last August, the first 6 months of their marketing year, the total is 4 million bushels, which is twice as much as the preceding 12-month marketing year. The first 6 months of this year's 4 million bushels from the 0.7 million bushels of the last marketing year is a fivefold increase from 1 year to the next.

If that trend continues, it will destroy the domestic market for the U.S. Durum producer. Why? Because the Canadian Wheat Board has a monopoly on all Durum bought and sold in Canada. The Wheat Board does not pay the farmer until the grain is sold and only pays what the Canadian Wheat Board sells it for on the pool basis.

In contrast, the U.S. grower is responsible for deciding whether or not to sell on any given day into our markets in which prices are publicly quoted and change every day. The Canadian Wheat Board knows our public prices and can undercut our price on any given day and get the sale while the U.S. grower is left as a residual supplier.

The U.S. Durum Growers Association has a problem with the free trade agreement because it is not fair trade for the U.S. Durum growers. We should not have to take Canadian imports when we have a surplus that is estimated to be 63 million bushels on June 1, 1988. That is about the average annual domestic consumption. It is about half of the total and it would equal the domestic consumption.

Our Government is in the process, through the likes of the export enhancement program, to get rid of the excess stocks, but the Canadian Wheat Board is on the move to take over our market because they are increasing their production and increasing their exports to us.

Now, the Durum market is worth about a $180 million to the United States and the domestic pasta industry, which uses the Durum, is worth about $2 billion to the U.S. economy. The Durum farmers across the region favor fair trade because half of our Durum is exported to the world, but we just do not feel that this agreement is very fair to us.

Thank you.

[Statement of Mr. Ongstad follows:]

Testimony
By
Bill Ongstad, President
U.S. Durum Growers Association

Durum Growers are upset with what the Canadian Wheat Board has been doing while the Free Trade Agreement negotiations have been going on. Both the U.S. and Canada are surplus producers of durum. The U.S. has produced an average of 120 million bushels. About half is used domestically and half is exported. Canada has traditionally produced an average of 80-90 million bushels. The last two years Canada has increased production to 143 million bushels and 150 million bushels while the U.S. has cut back to 100 million bushels the last two years.

While Canada has been negotiating the Free Trade Agreement the Canadian Wheat Board has been laying the ground work to dump durum on the large U.S. domestic market. U.S. producers have no chance to sell to Canada because of variety licenses, import licenses and end use certificates, which the Canadian Wheat Board will not grant. Additionally most of the durum processing industry is in the U.S.

From a five year average of 37 thousand bushels of Canadian durum coming into the U.S. imports have increased to the August 1, 1986-87 crop year total of 2.3 million bushels and August 1, 1987 to February 14, 1988 total of 4 million bushels. This is already 8% of the U.S. Domestic market with half of their marketing year to go.

From August 1, 1987 to February 14, 1988, the total is 4 million bushels and the August 1, 1986 to February 14, 1987, total was .7 million bushels. That is over a five fold increase in exports from one year to the next. If that trend continues it will destroy the domestic market for the U.S. Durum Producer. Why? Because the Canadian Wheat Board has a monopoly on all durum bought and sold in Canada. The Canadian Wheat Board does not pay the farmer until the grain is sold and only pays what the Canadian Wheat Board sells it for on a pool basis. The U.S. Grower is responsible for deciding whether or not to sell on any day of the year. The Canadian Wheat Board knows our public prices and can under cut our price on any given day and get the sale while the U.S. grower is left as the residual supplier.

U.S. Durum Growers Association has a problem with the Free Trade Agreement because it is not fair trade for the U.S. durum growers. We should not have to take Canadian imports when we have a surplus estimate to be 63 million bushels on June 1, 1988. That is of the average annual consumption for domestic and export markets in the U.S. Our government is trying to get rid of our excess stocks and the Canadian Wheat Board is on the move to take over our durum market.

The durum market is worth $180 million dollars to the U.S. The domestic pasta industry, which uses the durum ground into semolina for pasta provides more than 2 billion dollars to the U.S. economy.

U.S. DURUM GROWERS POSITION ON THE CANADIAN FREE TRADE AGREEMENT

The U.S. Durum Growers Association supports the free trade concept but views with concern the detrimental effects such an agreement will have on durum and hard red spring wheat growers in border states. Marketing procedures, acreage limitations, subsidies, chemical use restrictions, and monetary values are distinctly different for the two countries. U.S. Durum Growers Association feels that the potential for massive durum and spring wheat imports into the U.S. is a very real threat and could be devasting to U.S. growers. If (Section 22) provisions are eliminated under the agreement, what mechanism will be put in place that will insure protection for U.S. growers? Until such a time as the above mentioned differentials become equal to the point that the potential for massive imports of durum and spring wheat into the U.S. are eliminated, the Durum Growers must stand in opposition to that portion of the Free Trade Agreement.

WHEAT SHIPMENTS

Commercial Canadian wheat shipments to U.S. destinations. (In millions of bushels.)

	WHEAT	DURUM
August 1987-November 1988	1.1	4.0
August 1986-November 1987	4.3	0.7
Total 1986-1987	12.7	2.3
Total 1985-1986	10.1	0
Total 1984-1985	5.8	0
Average 1980-1981/1984-1985	2.5	0.04

Total Canadian wheat and durum exports to all destinations. (In millions of bushels.)

	WHEAT	DURUM
August 1987-November 1988	273.1	29.5
August 1986-November 1987	198.3	23.7
Total 1986-1987	676.0	72.0
Total 1985-1986	587.8	51.4
Total 1984-1985	558.4	66.1
Average 1980-1981/1984-1985	598.9	84.5

Source: North Dakota Wheat Commission

Chairman GIBBONS. Well, thank you.

All you three gentlemen make very strong, very powerful statements, and I hope you will forgive me, I am from the orange-growing country of the world, and not wheat area, and I am not a member of the Agriculture Committee. So, my use of the vocabulary of wheat growing and farm programs is limited.

As I understand it from our staff, the free trade arrangement does not waive the use of section 22 of our Agricultural Adjustment Act, and that would be still available.

I also understand from the staff that the Wheat Board will be prevented from selling their product in this country at less than their cost, which would include their acquisition costs plus storage plus handling costs.

Now, perhaps I am wrong in this statement, but I think I am correct. Just because the subsidy is not eliminated in this agreement does not license the subsidy that the Canadians have, and any remedy that you now have against an injurious Canadian subsidy would still be available to you under our trade laws, but it would be a burden on you to make sure that those were enforced.

I guess my first question to you is, all things considered, maybe each one of you could respond to this, are you worse off after this agreement than before this agreement? Are you in a worse position vis-a-vis your Canadian competitors after this agreement than you are presently? What do you think?

Mr. WATSON. I would say yes, we are worse off after this agreement than we are before this agreement because now we have an additional competitor to compete with in our own domestic markets.

Where we were getting premiums for Spring wheat up to 30 and 40 cents for one point of protein, from 14 to 15, the Canadian Government does not pay that kind of a premium to their growers and, therefore, it is going to cost me, I estimate, 30 or 40 cents a bushel for the Spring wheat that I grow, and that is a considerable amount.

As far as your statement about acquisition costs, plus storage, handling and that type of thing, I do not think the Canadian Wheat Board determines the final payment to the wheat grower till one year after he acquires—they acquire the grain.

So, the acquisition costs are not determined at that time, at the time they acquire the grain, and at the time they make the sale. That is made some time later.

And as far as section 22 is concerned, the new language in the agreement says there has to be some substantial—I am not sure of the wording, but I think it says substantial change to invoke section 22. The language is different now than it was before, and we are asking for that language to be restored to what it was originally.

Chairman GIBBONS. Mr. Ongstad, do you feel that you will be better off or worse off with the agreement?

Mr. ONGSTAD. Mr. Mayer was quoted as looking at the American market as a real potential. We have written statements from the Canadian side saying they view our market as a great potential. Before, you see, they did not export to the United States.

But we feel because they are increasing production and because they have increased the last 2 years in exports, they are going to continue to do that.

Chairman **Gibbons**. So, you would be better off without the agreement is what you are saying. Is that what you are telling me?

Mr. **Ongstad**. Yes. I am saying we are going to be worse off after the agreement, if the Canadian Wheat Board decides to market in the United States. Up until the last couple of years, they have not done much marketing in the United States. But because they are increasing their production, they have the potential to sell more to us and that is money that ends up in Canada and not in this region.

Mr. **Kjesbo**. Mr. Chairman, we in Minnesota feel we will be worse off with the agreement as proposed. A couple of reasons for it. No. 2, the Crow's Nest, the allowing of the U.S. negotiation that allowed Crow's Nest subsidy going east, which happens to be where most of the import wheat has gotten from Canada on the eastern side, that is worth about 50 cents a bushel. So, by allowing that, they are gaining about 50 cents a bushel or roughly $17 a ton, I think. You guys help me with the math. Something like that.

We are worse off to that extent. No. 1. No. 2, I was told, I would agree with Cecil that the old language of the section 22 was really better language for us.

As I understand it now, we will not have the opportunity of section 22 unless there are—the PSEs are deemed to be equal. I see a gentleman nodding his head. We fear that the two support mechanisms of the two countries will not be classified as equal, and thereby we may lose recourse through section 22.

Chairman **Gibbons**. Mr. Pease.

Mr. **Pease**. Thank you, Mr. Chairman.

I appreciate the opportunity to be here in the home State of my colleague, Mr. Dorgan, and I am really looking forward to learning a lot today.

Could one of you gentlemen or all of you comment on the inaccessibility of the Canadian market to our products? Trade is supposed to be a two-way street. I think I heard you say this morning essentially that the Canadian Wheat Board has licensing requirements that effectively prohibit United States wheat from going into Canada, is that correct?

Mr. **Watson**. Yes, sir. There is two ways that the Canadians keep U.S. wheat out of the Canadian market. No. 1, their varieties are licensed. Even the Canadian wheat farmer has to grow a licensed variety before he can sell that into the milling channels in Canada.

They do raise some unlicensed variety, however, and some of those are their unlicensed variety they are exported into the United States.

Also, the Canadian Wheat Board grants import licenses and as long as we have the so-called differences in subsidies, which I do not agree with because they have some benefits that were never negotiated for or with, they are going to restrict the borders to us. We just cannot export wheat to Canada.

Mr. **Pease**. Is any wheat being exported now, let us say, in 1987? Was any United States wheat at all exported into Canada?

Mr. **Watson**. We have an agreement with Canada, a seed can arrangement in North Dakota, where we do export some seed into Canada but nothing for commercial milling use or that type of thing. There may be a minimum amount of seed.

Mr. **Ongstad**. Both countries are surplus producers of wheat. With their transportation rates—the Crow's Nest rate—no, it is no economic advantage for us to give them wheat. The economic advantage lies with them to export the wheat to us.

Mr. **Pease**. Mr. Chairman, I think for the moment, that is all I have.

Chairman **Gibbons**. All right. Fine.

Mr. Dorgan.

Mr. **Dorgan**. Mr. Chairman, thank you.

This has been excellent testimony, I think, and one of the major issues you raise is that the U.S. market is now open reasonably so to Canadian exports and the Canadian market is reasonably closed or unreasonably closed to American exports to Canada, speaking now of particularly wheat and Durum.

After the free trade agreement is ratified by both countries or agreed to by both countries legislatively, the Canadian market will still be closed to American wheat and the American market will still be open to Canadian wheat, but section 22, which has been a counterweight all of these years, will have been significantly weakened and there is nothing that would prevent the Canadian Wheat Board in the area of section 22 from saying we are going to dump a lot more product into the United States.

One of your reactions to this agreement is based on that assumption, is that correct?

Mr. **Watson**. That is correct. Currently, the Canadian Wheat Board can export wheat into the United States by paying a 21 cent a bushel tariff, and I guess I did not bring this up before, but we have a considerable difference in the value of our dollar, and if it is an advantage to the Canadian wheat farmer or wheat board to sell wheat into the United States, paying a 21-cent tariff.

Now, I know I would haul wheat quite a ways for 22 cents a bushel, especially if it was an American dollar versus the Canadian, and, so, it just looks like to me that if we remove these restrictions and, yes, your assumption is correct, even after the agreement is ratified, our borders will be closed as far as shipping grain north and ours will be even more open than they are now.

Mr. **Dorgan**. The interesting background to the agricultural overproduction problem, if overproduction is, indeed, a problem, is that the United States has spent a substantial amount of money on an agricultural program to control supply and much of that money has gone to set aside substantial acreage of land so that production could not occur.

Even as we on this side have paid for that substantial cutback in production and substantial set aside through various programs, the absence of an agreement with other wheat-producing countries has meant that they increase production. Production on the Canadian side has increased substantially over the years as we have tried to cut back to deal with the surplus. We have, many of you know, producers here who produce on both sides of the border. It is a schizophrenic existence for these farmers to hear from the American

Government, we want you to cut back now and exercise some real restraint, and then to hear from the Canadian Government, saying we would like to see if you cannot plant a little more wheat this year.

So, that is a background of what is going on here. I think the point you make about section 22 is something that we should focus on a little bit this morning, because this section served as a counterweight to the Canadian Wheat Board's opportunities as a monopoly to move wheat into this country.

It has not been used very much, but it has always represented a threat that if somebody does something to substantially undermine our domestic program, section 22 could be invoked. As I understand it, the free trade agreement will substantially weaken 22. Perhaps we can hear from Mr. Merkin or someone else on that today to understand exactly how that has been weakened, because I think that is an important point.

Chairman GIBBONS. Fine. We will do that. I think after we hear from Mr. Johnson that I will depart from my usual moment and ask the folks from—who negotiated this to comment a little on the testimony we have heard. So, do not want to surprise you back there. Just kind of get you ready for it.

Mr. DORGAN. Can I make one other question, Mr. Chairman?

The issues that were raised about premiums, I think, are important. The point that you made, Cecil, was that the agreement, the way it is structured, would jeopardize price here because Canadian wheat would come in to seek higher premium payments on the American side.

Could you elaborate on that a little bit?

Mr. WATSON. Okay. Spring wheat is considered to be a premium wheat. It is used—it is primarily used in the export markets for blending with lower quality wheats to bring it up to a standard where they can make acceptable bread from it.

And the usual pattern in the United States has been in times when high premium wheat is short, we pay a premium for it.

The Canadian wheat is of the same quality as ours. They do not pay a premium to amount to anything in the export to the farmers. They use it in the export market as a trading tool, and I feel like if we have large quantities of high protein wheat coming into the United States, we will lose the premium that we now enjoy on spring wheat and, therefore, a substantial drop in my income.

Chairman GIBBONS. Thank you.

Mr. Johnson.

STATEMENT OF HON. TIM JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA

Mr. JOHNSON. Well, thank you, Mr. Chairman, and I appreciate the invitation to join you and Ways and Means Committee members here in Fargo this morning.

Chairman GIBBONS. Glad to have you.

Mr. JOHNSON. As a member of the House Agricultural Committee, I appreciate your allowing me to sit in and to listen to the North Dakota perspective on our Canadian free trade agreement which has great consequences for North and South Dakota, and I am pleased to be here with my good friend, Byron Dorgan, as well, who has been a great assistant to me on agricultural issues in particular.

I am hopeful that before the morning is out, that we may have some comments from the panels and from the trade representative relative to section 22 and, in particular, relative to some comment on the PSE, the producer subsidy equivalent, and if we were to be able to perfect that, what should we be doing.

Just as a comment to some degree, members of the panel may have some reaction to it, there has been a lot of attention directed at transportation subsidies and problems with section 22, understandably, and I think we all nod in the direction of free trade. I think we all understandably do that.

But even if we were to correct those problems, I think those of us in the agricultural sector face some serious challenges here. We have in Canada a nation with a relatively very small market and a very huge production capability. In the United States, we have a nation with a huge market as well as production.

Even if we were able to correct the transportation and section 22 problems, it would seem to me that the greatest beneficiary of free trade plan is certainly Canada, not American agricultural producers, at least that would be my offhand observation from an agricultural perspective.

Our access to the Canadian market is of marginal value to our producers in this country. Their access to our market is of enormous value to them. Even if we were able to have an absolutely level playing field, which there is some question whether we are achieving that here, but even if we were able to achieve that, I wonder if members of the panel would comment about who are the winners and who are the losers of free trade in North America from a wheat perspective.

Mr. **Watson**. As you say, even with the level playing field, I am sure we would see increased imports of Canadian wheat into the United States, but I guess it has been a philosophy of the wheat grower and because of the markets we enjoy around the world, in a relatively free environment, that, you know, I guess, we would have to exist under those conditions.

But I agree that even with a level playing field, we are looking at reduced income for the Spring Wheat and Durum farmer of North Dakota, Minnesota, Montana, South Dakota.

Mr. **Kjesbo**. Yes. Congressman Johnson, I would echo Cecil's comments.

Assuming that the Crow's Nest was eliminated, which it has not been, assuming that we have the premium issue which was talked about earlier, if we would have that neutralized, the size of the two markets, you make a good point, the size of the two markets is so much different, the size of the American market being such a large carrot for the Canadian producer versus the size of their market, which is not as big, that alone, I think, says about who can be the winner and who can be the loser.

It is a rather delicate thing, you know. We feel in many ways some fondness for the Canadians, but, on the other hand, there are some things over the years where I think they picked our pocket. For example, in 1962, roughly in there, we embargoed Cuba 1.3

million market. Guess who supplies Cuba with Spring Wheat? The Canadians are suppliers and that has been true, I believe, in the Soviet embargo and some others, the Poland situation or whatever.

So, they have not necessarily been sympathetic to our causes over the years, and I think your point of all the things that we are concerned about, the Crow's Nest problem, the premium problem, the problem as Mr. Chairman said that we cannot get to their market, we cannot go there, we cannot ship it even if we wanted to, assuming those things were neutralized, which I do not think they can be, we would still—the size of the market, the innate size of the market has left us at a considerable disadvantage.

Mr. **ONGSTAD**. I would just like to say that durum growers would welcome a level playing field. In such a case the Canadian farmer and the American farmer would be selling into a publicly traded market, Minneapolis, Chicago, or wherever, and the individual that had the lowest cost of production would survive. That would be fine, but as it stands today, I, as an individual, am disadvantaged in trying to compete with the Canadian wheat grower.

Mr. **DORGAN**. Mr. Chairman, might I ask one additional question?

I understood you to testify that it was your understanding the negotiations that were underway with Canada on the FTA were negotiations that at least with respect to agriculture would only focus on export subsidies and would not include any comprehensive agricultural provisions, and that you were surprised by the fact that the announcement included more comprehensive provisions.

Whoever testified to that, could you elaborate on that?

Mr. **WATSON**. No. I think what I said, Congressman, is that when we met with Clayton Yeutter 2 years ago, when we talked about a level playing field, and then our wheat tech representative in Washington, who provides us with a lot of information, at that time told us that agriculture and especially wheat is no longer on the bargaining table because our systems are so entirely different.

So, at that time, we kind of went to sleep and forgot about it. Then, when the agreement comes up, we find out we are involved and I am sorry to say that the two organizations in the United States, U.S. wheat, our market development organization and our National Association of Wheat Growers, to my knowledge, were not contacted at all about the—and I would certainly think that whoever was negotiating for the United States would certainly contact the market development people and the National Association of Wheat Growers for some input.

Mr. **KJESBO**. Yeah. Congressman Dorgan, I believe that I testified to that, and it is my understanding, maybe the staff can straighten me out, my understanding was that during the discussions, there was an agreement reached that said we will deal with the domestic subsidies and GATT and let us deal with the export subsidies and the FTA. That is my understanding. I stand corrected if that is not correct, if that is not so. I believe that is correct, that there was an agreement to separate the two.

Mr. **DORGAN**. Thank you, Mr. Chairman.

Chairman **GIBBONS**. Let me say while there was an agreement, I was not privy to that either. We are not waiving any of our rights under our current subsidies laws by this agreement. That has been a strong bone of contention between the United States and Canada for quite some time, and they are well aware of that situation.

We usually do not ask the administration to come and sit with us during congressional hearings. It is—we are trying to learn, but we do have an expert here with us today, Ms. Ann Veneman, who is really an expert in international negotiations on agricultural products, and, so, I am going to ask Ann to try to enlighten us a little more about this agreement and the things that you have heard here this morning and perhaps what she can add to it or contest.

Go right ahead, Ann.

STATEMENT OF ANN VENEMAN, ASSOCIATE ADMINISTRATOR, FOREIGN AGRICULTURE SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Ms. VENEMAN. Thank you, Mr. Chairman.

I appreciate the opportunity to comment here today because, as I listened to the testimony, one of the things that really strikes me is that there is probably more of a lack of understanding about some of the provisions of the agreement than anything.

Generally, we believe that certainly this agreement makes no agricultural interest worse off and, in many cases, agricultural interests are better off.

With regard to the issue of subsidies, there was this recent reference made to the fact that there was an agreement to deal with export subsidies and not really domestic and across the board type subsidies.

I think that generally—that is a true statement. The agreement begins by stating that, or the agricultural chapter of the agreement, I should say, begins by saying that both countries agree that their primary goal with regard to subsidies is to eliminate trade-distorting subsidies on a global basis and that they will work together through the multilateral negotiations to achieve that goal.

So, there is a recognition of the fact that you cannot deal with domestic subsidies or eliminate domestic subsidies in a vacuum. In other words, the global situation is determinative of that.

But the agreement did deal with export subsidies.

Chairman GIBBONS. May I ask you a question because this is my understanding of this? The fact that you could not deal with them in that agreement and you agreed to put the ball does not in any way bind the United States to waive any of its existing laws on injury and subsidy as I understand it.

Ms. VENEMAN. Exactly right. We have not waived any of our laws on countervailing duty, antidumping. We—all of those remedies remain in effect. They are completely unaffected by the agreement.

So that just as the subsidy programs are unaffected, so are the remedies unaffected. It is just not dealt with by the agreement.

Mr. DORGAN. Except for section 22, which has been weakened, would that not be correct?

Ms. VENEMAN. Well, I disagree that it has been weakened in any significant way at all.

Mr. DORGAN. Explain the change.

Ms. **VENEMAN**. Well, from the practical sense, I do not think so. Let me just finish up on export subsidies and then I will get to section 22 and export subsidies.

The two countries agreed not to use export subsidies for product exported to the territory of the other party. Generally, we have not done this anyway. We have not used the export enhancement program, for example, on product exported to Canada.

Because Canada uses the dual pricing system under the Wheat Board, as we have talked about today, there is an additional provision of the agreement to address that fact, and that is that Canada or both countries agree that the government or governmental entity, for example, the Wheat Board, would not sell to the market of the other country at a price below acquisition cost plus handling, storage and other costs.

Now, that is significant because I have heard a lot of statements here today about the fact that this agreement is going to allow Canada to dump wheat into our market. In fact, we believe that the agreement will assist in preventing that from happening because of that section which prevents selling it below cost, No. 1, and No. 2, we preserve all of our antidumping and countervailing duty rights.

So, with those two provisions, I think we are better off and we are more protected from dumping.

On the issue of the Western Grain Transportation Act subsidies, again we deal with the export subsidies versus the domestic subsidy-type issue. Canada agreed to eliminate the Western Grain Transportation Act subsidies through western ports. Well, the question has been continually asked, why through western ports, not through eastern ports, that is, Thunder Bay.

The western port is conditioned upon export. It is an export subsidy. So that it fit into the overall agreement. The Thunder Bay subsidy was not dealt with, just like the rest of the domestic subsidies were not dealt with.

I have heard statements today here that——

Chairman **GIBBONS**. But they are not waived?

Ms. **VENEMAN**. Yeah. That is exactly——

Chairman **GIBBONS**. They are not licensed anymore?

Ms. **VENEMAN**. Right. I have heard statements here today that we have allowed them to continue. We did not negotiate to allow them to continue. They simply were not dealt with in the agreement. So that——

Chairman **GIBBONS**. To the extent that they injure you, they are still actionable.

Ms. **VENEMAN**. Exactly.

Mr. **WATSON**. Ma'am, would you consider the Crow's Nest, the law in Crow's Nest going east, would you consider that an export subsidy from the Canadian point of view or a domestic subsidy?

Ms. **VENEMAN**. It is a—the Crow's Nest on eastern ports has been a generally available subsidy, like our water way subsidies, like our deficiency payments, that is used across the board for product exported through Thunder Bay and into Ontario as well as product exported to third countries. It is a generally available subsidy, not an export subsidy. It is not conditioned upon export.

Mr. **Kjesbo**. But since that is the port that the majority of the wheat comes into our market, from their point of view, I think I would view that as an export subsidy. It should have been conditioned.

Ms. **Veneman**. No.

Chairman **Gibbons**. It is obviously—excuse me—it is obviously a subsidy. It just was not one of them that was eliminated in this agreement, but the fact that it was not eliminated does not mean that it is not actionable to an American who is injured.

Mr. **Watson**. I have several questions for Ann.

No. 1. Would you define acquisition costs as you understand them for the Canadian Wheat Board?

Ms. **Veneman**. As I understand it, acquisition cost is the price that the Canadian Wheat Board pays initially for the wheat that comes into its stocks.

Mr. **Watson**. They do not determine that until the year after the farmer delivers the wheat. So, at the time of acquisition——

Ms. **Veneman**. They pay——

Mr. **Watson** [continuing]. They do not know what the total cost is.

Ms. **Veneman**. As I understand it, they pay an initial acquisition cost, and then they pay the handling, storage and other costs, and then, at the conclusion of the marketing year, any amount that is left over, they pay out, which is like a bonus rather than an acquisition cost.

Mr. **Watson**. And the other question is, if you do not think that the language in section 22 is any different, then why can we not change it back to what it was?

Ms. **Veneman**. Okay.

Mr. **Watson**. Leave it like it was.

Ms. **Veneman**. I have not addressed section 22 yet, but since it is such an important——

Chairman **Gibbons**. Well, I do not think she has got the power to change section 22.

Mr. **Watson**. No.

Chairman **Gibbons**. Only Congress does.

Mr. **Watson**. She says we.

Chairman **Gibbons**. Well, that is all right. We are all together. We are all Americans here.

Ms. **Veneman**. Let me just go through a little bit what the section 22 provision does. What it basically says is it is not a section 22 specific provision. Okay. That provision says that both parties agree that they will not impose or reimpose quantitative restrictions on grains unless there is an increase in imports due to a change in the price support programs of either party.

Okay. Now, so, we have retained—that says that we retain the right to use quantitative restrictions, including section 22. Number one, we have not used section 22 for a number of years. It is not something we generally use. There are a lot of conditions that have to be met before you use section 22 and from a practical standpoint, the likelihood is that we would never be thinking about using section 22 unless we would have a change in a price support program which led to an increase in imports.

You are not going to start to think about using section 22 unless you have an increase in imports, and a change in the price support program is undoubtedly going to be the reason for that.

Now, let me tell you another benefit of this section. The—as you know, the—and we have talked a lot today about the licensing provisions of the agreement, and there is a provision in this agreement which I think wheat growers probably should recognize as being something, while it may not be of immediate benefit, could be of benefit down the road, and that is the agreement provides for a mechanism by which the licenses can be removed if the levels of support become equivalent.

Now, if those are removed and it looks like through that provision, the licensing on oats, for example, would be removed immediately, if those are removed immediately, then it means that Canada would also be subject to the same conditions of an increase in imports and a change in the price support programs before they could reimpose those.

So, that is not just a section 22 provision; it applies reciprocally and to all types of quantitative restrictions which are GATT legal and which would be permissible under the agreement.

Now, another thing that was really—is really a misunderstanding is that the section 22 provision is tied in with the measurement device, the PSE-type measurement device. There is absolutely no connection between those two, none whatsoever.

The section 22 provision is totally dependent upon what the definition of a change in the price support program is. Okay. It has nothing to do with measuring under that measuring device. That measuring device is only designed and only in the agreement for purposes of determining whether or not there are equivalent support levels for purposes of removing the licensing system.

So, that is a misconception I did want to correct on the section 22 provision.

Now, we have had a number of discussions with the wheat growers' representatives in Washington and discussions about whether or not some of this can be clarified through report language and we have had discussions about that and we are hopeful that, you know, maybe we can work out some of the concerns that are being expressed about this section.

A couple of other things I wanted to mention. On the question of the tariff, there has been some indication that the tariff is going to be eliminated. All tariffs under the agreement, as you all know, are going to be eliminated within a 10-year period.

We have been informed by, you know, many of the wheat representatives that the 21-cent-per-bushel tariff is not significant and would not significantly—would not affect trade to any great degree.

Mr. **Kjesbo**. Ann, I need a point of clarification with your help.

As we talked about earlier, the Crow's Nest east is worth roughly 50 cents a bushel, I believe, $17 a ton, something like that.

If it was not considered to be an export subsidy, and it is not considered in the PSE equation, what is it? It is 50 cents a bushel.

Ms. **Veneman**. It is considered in the PSE equation.

Mr. **Kjesbo**. It is considered in the PSE?

Ms. **Veneman**. Yeah. That is definitely in there. All transportation subsidies are in that equation.

Mr. **Kjesbo**. Including the Crow's Nest east?

Ms. **Veneman**. Sure. Absolutely.

Mr. **Watson**. Ann, the Crow's Nest rate west was only eliminated for wheat coming into the United States. To other nations, that is still in place, is that not correct?

Ms. **Veneman**. That is right. And that is—you know, you said that that was not a benefit to the wheat growers. We know that that export subsidy—that western ports was not particularly used for wheat. It is actually more of a benefit, I think, in terms of what it was being used for. It is going to be more of a benefit to the mill feed and rape seed movement.

Mr. **Ongstad**. Why was not the eastbound subsidy eliminated for wheat coming into the United States if it was for the west?

Ms. **Veneman**. Well, as I have tried to explain, the difference is that to the west, it is conditioned upon export and, therefore, it is an export subsidy.

In other words, it does not matter. You can put product on the transportation system that is going through these east ports, east coast ports, and it gets the subsidy, regardless of where it is going. Much of that wheat goes right into Ontario across the lake. It does not matter whether it is going domestically. It does not matter whether it is going to a third country. It does not matter where it is going, it gets the subsidy.

So, it is not a subsidy which is conditioned, that is, only given based upon whether or not it is exported. It is like the export enhancement program is a subsidy conditioned upon export. You cannot get the export enhancement program unless it is destined for an export market.

So, an export subsidy means a subsidy which is conditioned upon export and the subsidy through Thunder Bay is not conditioned upon where that wheat is going or where that product is going, I should say.

Chairman **Gibbons**. But let me add this. If it comes in with that subsidy and that subsidy is harmful, you meet the other requirements of the American law, you can still win a countervailing duty case.

Ms. **Veneman**. Absolutely. And I think that is an important point, Mr. Chairman, because if we had "allowed", as the testimony has indicated today, that subsidy to continue, it would imply that the countervailing duty actions and antidumping actions would no longer be permissible, and that is not the case.

We have not allowed it. We simply have not dealt with it like any other domestic subsidy. It has not been dealt with in this agreement, and it will be the type of subsidy that will be looked at very closely in the Uruguay round of trade negotiations.

Mr. **Watson**. I would like to ask you a question.

Why do you think that the Canadian wheat farmers are so excited and so enthusiastic about this free trade agreement?

Ms. **Veneman**. The news clips I have read, I have not heard a lot of excitement about it, but—

Mr. **Watson**. You better come out to the area where these people live because they are very excited about it.

Chairman **Gibbons**. I am glad we found somebody to shout about it.

Well, as I said, we did not come here to try to convince, we came here to try to learn, and that is the purpose of this study that we are conducting here this morning.

I know you are going to have lots of questions for Ann, and can you give them your address or your telephone number or something of that sort? We have got some other folks who want to be heard here this morning. Could you repeat it for the public here now? And we will make her available as long as her boss will allow us to make her available to answer your questions.

But I had figured that at about 4 or 5 minutes from now, I had better go on to the next panel or I am going to get run out of town, and as I say, it is not our purpose to indoctrinate or to convince you that this is a good agreement. We have come here to try to learn what your concerns are and to try to make a decision as to what we should do.

So, let us let Ann give her telephone number. This is her professional telephone number, not her residence.

Ms. VENEMAN. It is area code (202) 447-5691.

Chairman GIBBONS. And she is Ann Veneman, and she is—what is your exact title?

Ms. VENEMAN. I am the Associate Administrator of the Foreign Agricultural Service.

Chairman GIBBONS. All right. Fine.

Don?

Mr. PEASE. Mr. Chairman, I would like to ask Ann one question before Ms. Veneman leaves.

Chairman GIBBONS. All right.

Mr. PEASE. This probably reflects my inexpertise in this subject, but as I understand it, if the miller in the United States wants to buy wheat to process, that miller can buy U.S. wheat or he can buy Canadian wheat, is that correct?

Ms. VENEMAN. Yes.

Mr. PEASE. But if a miller in Canada wants to buy wheat to process, that miller can only get it through the Canadian Wheat Board, is that correct?

Ms. VENEMAN. Yes.

Mr. WATSON. As I understand it, that is correct, because even if we did have a license to enter into Canada with wheat, we would have—we still would be restricted from using their transit system or their country elevator system. It has to be delivered to the end point, but at this time, there are no licenses for milling wheat going into Canada, as I understand it.

Mr. PEASE. The Canadian Wheat Board apparently can and routinely does turn down requests for importation of U.S. wheat?

Mr. WATSON. I cannot answer that question. I do not know.

Mr. PEASE. Mr. Chairman, we talk about a level playing field. It seems to me that that is fundamentally unlevel, if that is a word. Any U.S. miller without regard to government action can buy any amount of Canadian wheat, but Canadian millers cannot buy U.S. wheat without going through governmental agencies.

Mr. WATSON. Even worse, in North Dakota right now, a Canadian wheat farmer can sell his wheat to the Canadian Wheat Board, buy it back, and then they can truck it into the United States and sell it through our country elevator system and make a considerable amount of money. That is happening right now.

Ms. **Veneman**. If I can just make a comment on that. There is a lot of inequities between the two countries, and this type of inequity, what we are talking about here, is not an inequity that has been set up through the free trade agreement.

Mr. **Pease**. I understand that.

Ms. **Veneman**. And, in fact, it is an inequity that we have not succeeded in totally addressing, but at least we have set up a mechanism that perhaps these licenses can be removed when the subsidy levels become equivalent, and for oats, as I said, we expect those licenses to come off fairly immediately under the agreement, probably as soon as it is implemented.

For barley, they may come off fairly soon. It is not quite as certain at this point how those will be determined. For wheat, we subsidize more than the Canadians do, and so long as we are doing that, the likelihood is that the subsidy levels will not be determined to be equivalent in any time in the real near future, but that is not to say that the programs in one of the two countries is not going to change enough so that they could not come off and at least we have provided a mechanism to start to deal with some of those inequities.

Chairman **Gibbons**. So that when the subsidies are equal or have been eliminated, hopefully eliminated, then the licensing arrangements will come off, is that correct?

Ms. **Veneman**. That is correct, Mr. Chairman.

Mr. **Watson**. The EPA, Ann. What did you negotiate for as far as the Environmental Protection Agency is concerned? The chemicals we use versus the chemicals they use, the difference in rules, the polluting of the ground air, the water in Canada versus ours. What did you do there?

Ms. **Veneman**. I am glad you brought that up. Well, as far as actual pollution regulations in the two countries, I do not believe those were dealt with.

However, on technical regulations and standards that affect agricultural products, there has been a strong move to start to harmonize these because, as you know, technical barriers can be used as nontariff trade barriers, and there was not enough negotiating time in this agreement to actually harmonize all technical regulations that affect agricultural goods.

But what happened was that we set up a process by which technical regulations would be—there would be working groups established comprised of technical experts from both countries which would work towards the elimination of technical barriers and the harmonization of standards and sanitary and phyto-sanitary standards.

So that, hopefully, under this agreement, we will begin to make progress at least in the standards area.

Mr. **Kjesbo**. Mr. Chairman, a followup to Congressman Pease's point.

The trend is interesting. The Buffalo Mills, as I understand it, is where a lot of the Canadian wheat is milled, 2 years ago, that import number was in the 150,000 ton range, last year it was in the 400,000 ton range.

I think the trend is interesting there. The choice that the miller has.

Chairman GIBBONS. Well, as much as I hate to, I am going to have to break up this little discussion here now and go on to the next panel.

I thank each of you for your very learned and very sincere testimony here, and you have helped us understand the problem a lot better.

Thank you very much.

Next, we will have the North Dakota Barley Council, Mr. Richard Daws, the chairman; the Red River Valley Sugarbeet Growers Association, Mr. Robert Vivatson, the president; and the North Dakota Corn Growers Association, Mr. Robert Thompson, president.

Unless you gentlemen have a different preference, we would go first with the North Dakota Barley Council, Mr. Daws.

Mr. Daws, while the people are filing out of the room, may I say that we have brought along some government propaganda that explains this agreement. No, I am joking about that. We hope we have got a good objective explanation.

Frank, do you know where that explanation is?

Mr. PHIFER. At the door in a box. The summaries of the agreement.

Chairman GIBBONS. The summaries of the agreement are at the door in a box, and we only brought a hundred of them. We came in a small plane, so be careful about how many you take, please.

Mr. Daws.

STATEMENT OF RICHARD E. DAWS, CHAIRMAN, NORTH DAKOTA BARLEY COUNCIL; AND PAST PRESIDENT AND DIRECTOR, NATIONAL BARLEY GROWERS ASSOCIATION

Mr. DAWS. Thank you, Chairman Gibbons, Congressman Dorgan, subcommittee members.

I am Richard Daws, a farmer in Michigan, North Dakota, and today I am representing the North Dakota barley producers, as past president and director of the National Barley Growers Association, and also chairman of the North Dakota Barley Council.

I might say this morning, talking about the weather, I think I got on an Alberta—got up on an Alberta Clipper this morning with the winds about 20 to 40 miles an hour and blowing. I think I was trying to be steamrolled to get here.

Chairman GIBBONS. Well, in Florida, we spend half of our time apologizing about the weather. We have another terrible joke, and I think maybe it is time to tell it.

We pick our oranges down there. That is the principal way of making a living in Florida. But we have another thing we say about our wonderful tourists, including Canadians, once they get out of town and cannot hear us. We say that one Yankee tourist is worth about forty crates of oranges and twice as easy to pick.

Mr. DORGAN. The chamber of commerce does not say that, do they?

Chairman GIBBONS. Go ahead. We are grateful. Go right ahead. Pardon me.

Mr. DAWS. Thank you. I am afraid some of this might be a little bit repetitious——

Chairman GIBBONS. That is all right. You can summarize.

Mr. DAWS [continuing]. To what you have heard because a lot of our barley concerns are quite similar to the wheat concerns, and the fact that it is governed by the Canadian Wheat Board, too.

Chairman GIBBONS. Yes.

Mr. DAWS. But I will try to summarize to a certain extent of what our views of the United States-Canadian Trade Agreement are and will outline to a degree not only the sentiments of the U.S. barley producer, but also that of the Canadian counterparts.

Generally, a person has to keep in mind that while the attitude by the U.S. barley producer appears to be negative, we are, too, like the trade agreement and would want it on a fair and equitable basis.

We in the barley producer area feel that we are taking a strong hit on this thing. Basically, the intent of the U.S. trade agreement will seem to be progressive, however. Ceratin features, as I will outline, make it unacceptable to barley farmers. It would appear that had the approach been more regulated and moving through ordinary channels instead of being on the fast track, I think we could have had a better input and got maybe some of the problems solved.

Immediate concern of the upper Midwest barley producers could be the influx of Canadian barley into the United States markets, causing additional surplus supplies. Canada normally produces more barley than the United States and has historically been forced to find export demand for from forty to 45 percent of the production, and as the table in your written testimony that shows the production as well as export figures for the United States and Canada.

Barley producers not only feel Canadian production is a threat in the long run, but inasmuch as subsidies on barley have been indicated to be equal to the two countries, it poses an immediate threat. Canada has exported barley to the United States in the past years at about 5 to 6 million bushel level. Although in the 1986–87 year, it went up to about 9 to 10 million bushels and we have heard reports indicating this could increase again in 1987–88.

So, as you can see, it has been increasing. At present, their exports are under the control of primarily the Canadian Wheat Board in Western Canada, and if, under the U.S. agreement, this restraint is removed, the barley could very well move in at will.

Potential of movement of barley should be a concern to the U.S. taxpayer as well as producer. If Canadian barley moves into our market system without some method of maintaining identity, it could very well end up in our EEP credits just like the wheat people testified.

Additionally, several States have various methods of tax relief to promote ethanol production. Canadian barley or grain could, by moving into our market chain and if used in the production of ethanol, be getting these tax benefits as well.

Under the trade agreement, Canada producers would be able to access our large domestic market. Comments of Canadian producers allude to this as a major benefit of the trade agreement. At the same time, the potential of U.S. sales into the considerably smaller Canadian domestic market is pretty much restricted.

At present, the U.S. barley sales in Canada are embargoed. Under the trade agreement, the potential still remains for an embargo in that the U.S. barley moving into Canada must carry an end use certificate specifying a miller or maltster or whoever, and if the U.S. barley does not have the end certificate, issue of which is still under Canadian control, that barley must be sold into Canada either colored or denatured, so that they can keep and preserve identity.

This is not required of Canadian barley coming into this country. Thus the potential for Canadians barley to be shipped and get into our EEP programs. It could be dumped at will or, I should say, sold at will, maybe is a better term.

Additionally, when we look at secondary barley markets, Canadian brewers can ship their beer into our markets, but the U.S. brewers cannot ship into Canada. This is specified in the trade agreement.

Canadian-fed beef and pork move into our markets and would be taking over a sizable share of our feed market. Further comment on that. U.S. beers can be sold in Canada, but they must be brewed by a Canadian brewer who has license to do so; however, they can only use Canadian-specific barley; they cannot use U.S. barley, but, yet, you will find Canadian beers at will down here.

A major point in all the consideration is the evaluation of subsidies. Here, the Canadians really waffle. Many experts feel that the U.S. subsidies are being over rated while down playing the part of the subsidies in the Canadian market. One of the most flagrant is western grain transportation again. The crow.

Grain moving to Western Canada for its export into the United States under the trade agreement would not receive Crow's Nest subsidy. However, at the same time, grain moving east would, as you all know.

So, I will give you an example. A comparison of rates to move barley to the west coast indicates that Canadian barley movement from an area north of Minot, which is in North Central North Dakota, would be about 30 cents a hundred weight. That is Canadian dollars. Twenty-one cents U.S. dollar. While the same hundred weight out of Minot would cost a $1.59.

Comparing it on a tonnage basis, reports are that Canadian barley is moving into Washington feed lots at $15 a ton less than U.S. barley. The real differential based on the above figures would indicate a transportation cost to Canadian farmers of $6 a short ton versus $31.80 U.S. for a short ton.

The Canadian exporter could pay the $6 transportation cost, the $2.91 import tariff, take the $15 discount off, and still make a $7.89 profit on a ton. It really has an effect in servicing our western—even our western domestic market.

The trade agreement should take into account the benefits world barley exports have received in price supports due to the U.S. retirement programs. In fact, this feature seems to be considered a detriment, and this has already been dwelled on as to our acreage reductions and that. So, I will not go into that.

Finally, it would appear that the trade agreement essentially kills the use of section 22, this also has been elaborated on already. I picked up the summary in the back of the room and on page, I think it is, 36, it states that the judicial process is dissolved and it goes to a binational group. In other words, there would be an arbitrarily selected group or panel and under that, with agriculture from 3 to 6 percent of the trade, I would question very seriously our possibility of getting somebody on this binational group to hear agriculture's grievances.

So, all in all, I guess we as the National Barley Growers and the North Dakota Barley Council would like to come out and oppose this trade bill. There is more in the written testimony, but I do have attached three sheets of information put out by the Western Barley Growers Association of Canada.

The yellow sheets in the testimony, I would like to read into the record just a couple of the quotes from their October 1987 Western Barley Growers Association paper on free trade.

They state that "about half the barley grown on the prairies is fed domestically to livestock. Without open access to that huge beef market, stateside, we would lose a major portion of our feeding industry and that's our most valued and reliable barley market."

This is quotes from Canada. In their December 1987 newsletter, they say that "the agreement is meant to make our access to that market more open and more secure while at the same time preserving our", meaning Canada, "existing structures and Canada's ability to devise policies suitable to our needs. The Government feels this has been accomplished."

In other words, the Canadian Government feels this has been accomplished.

Thank you.

[Statement of Mr. Daws follows:]

STATEMENT OF RICHARD E. DAWS, MICHIGAN, NORTH DAKOTA

Chairman Gibbons, Congressman Dorgan, Subcommittee members. My name is Richard E. Daws. I am a farmer from Michigan, North Dakota. Today I represent North Dakota barley producers as past President and Director of the National Barley Growers Association and chairman of the North Dakota Barley Council.

My statement will summarize various points of view on the United States/Canada Trade Agreement and will outline to a degree, not only the sentiments of the United States barley producer, but also that of their Canadian counterparts. Generally, a person has to keep in mind that while the attitude taken by the United States barley producer appears to be negative, as regards the Trade Agreement, the barley producers' preference would be free trade. In the instance of the United States/Canada Trade Agreement, the United States grain producer in general and the barley producer in particular is taking a "hit". Basically the intent of the United States/Canada Trade Agreement would seem to be progressive, however, certain features, as I will outline, make it unacceptable to barley farmers. It would appear that had the approach been more regulated; moving the legislation through normal channels, allowing for considered development of discussion and debate of the issues with possible amendment, rather than "fast tracking", could potentially solve some of the problems.

Immediate concern of the Upper Midwest barley producer could be the influx of Canadian barley into United States markets, causing additional surplus supplies. Canada normally produces more barley than the United States and has historically been forced to find export demand for about 40-45 percent of their production. The following table indicates comparisons of production and exports for selected years.

Testimony Given: Richard E. Daws, Michigan, North Dakota, for hearing of the Subcommittee on Trade of the House Committee on Ways and Means, Radisson Hotel, Fargo, North Dakota, Friday, March 11, 1988.

PRODUCTION AND EXPORTS OF BARLEY COMPARISONS FOR UNITED STATES AND CANADA; 1981-87

	PRODUCTION		EXPORTS	
	United States	Canada	United States	Canada
		000,000 bushels		
1981	474	628	92	252
1982	516	638	46	279
1983	510	469	96	193
1984	597	473	55	115
1985	593	570	37	220
1986	611	670	138	275
1987	519	661	152	221

Barley producers not only feel Canadian production is a threat in the long run, but in as much as subsidies on barley have been indicated to be equal for the two countries, it poses an immediate threat. Canada has exported barley to the United States in past years at about five-six million bushel level, this year indications are that this could be double or larger. At present, their exports are under the control of primarily the Canadian Wheat Board (CWB) in western Canada. CWB has maintained restraint in allowing exports. If under the United States/Canada Trade Agreement this restraint is removed, their barley could very well move in at will.

This potential movement of barley should be a concern of the United States tax payer as well as the producer. If Canadian barley moves into our marketing system, without some method of maintaining identity, it could conceivably be moved into our export channels and receive EEP credits. Additionally, several states have various methods of tax relief to promote ethanol production. Canadian barley or grain could, by moving into our market chain and if used in production of ethanol, be getting these tax benefits as well.

Under the Trade Agreement, Canadian producers would be able to access our larger domestic market. Comments of Canadian producers allude to this as a major benefit of the Trade Agreement. At the same time the potential for United States sales into their considerably smaller domestic market are very restricted.

At present, United States barley sales in Canada are embargoed. Under the Trade Agreement, the potential still remains for an embargo in that United States barley moving into Canada must carry an "end-use" certificate specifying a miller, maltster, etc. If United States barley does not have this end use certificate, issue of which is still under Canadian government control, that barley to be sold in Canada must be colored or denatured so it can only move to a feed lot. This is not required of Canadian barley coming into the United States and a reason for concern that their barley can move unidentified into EEP or other supported programs.

Additionally, when we look at secondary barley markets, brewing etc., Canadian brewers can ship beer into our markets but United States breweries cannot ship into Canada - this in the Trade Agreement specific. Canadian fed beef and pork moving into the United States would be taking over part of our potential feed barley market.

A major point in all the considerations is the evaluation of subsidies. Here the Canadians really waffle. Many experts feel that United States subsidies are being over-rated while down playing the part of subsidies in the Canadian Market.

One of the most flagrant Canadian subsidies is their Western Transportation Act (Crows Nest) whereby Canadian rail transportation is highly subsidized by the government. Grain moving to Western Canada ports for export to the United States under the Trade Agreement would not receive the Crow's Nest subsidy. However, at the same time, grain moving east to the Great Lakes would, as this part of the Grain Transportation Act was "grandfathered" into the Trade Agreement. I need not remind you that this eastward movement would take malting barley at subsidized rail rates into the very heart of the major concentration of United States malt houses.

A comparison of rates to move barley to the west coast indicates the Canadian barley movement from an area north of Minot would be about 30¢/cwt Canadian, (21¢ United States Dollar) while the same hundred weight out of Minot would cost about $1.59. Comparing on a tonage basis - reports are that Canadian barley is moving into Washington feedlots at $15.00 per ton less than United States barley. The rail differential based on the above figures would indicate a transportation cost to the Canadian farmer of $6.00 per short ton versus $31.80 per short ton for the United States farmer. The Canadian exporter could pay the $6.00 transportation cost, the $2.91 import tariff, take the $15.00 discount offered Washington feeders and still have a $7.89 balance based on differences in rail rates alone.

The Trade Agreement should take into account the benefits world barley exports have received in price support due to the United States' retirement programs. In fact, this feature seems to be considered a detriment.

Finally, it would appear the Trade Agreement essentially kills the use of section 22 in dispute settlements. This removes the action from the protection of the courts where it historically and should rightfully reside and puts it in the hands of an arbitration panel. Based on the apparent general reluctance of United States negotiators to protect grain producers and the rather flagrant disregard by the Canadians for United States policy in the past the barley producers do not feel comfortable with the Trade Agreement. The National Barley Growers Association and the North Dakota Barley Council oppose acceptance of the Trade Agreement as now written.

NOTE: The following three columns are selected articles taken from "Grain News" a regional Canadian farm paper and from the newsletter of the Western Barley Growers Association, Calgary. They give a flavor of some of the producer thinking in Canada relative to the US/Canada Trade Agreement.

Grainews
January, 1988
Manitoba Section

Free trade will be bonanza for livestock industry, says expert

The free trade agreement between the U.S. and Canada will result in "a new era of growth and prosperity for the Canadian livestock industry," said a financial consultant to the livestock industry.

Pat Hovan, who is with McLeod, Young, Weir in Calgary, told the annual meeting of the Saskatchewan Cattle Feeders Association, "The direct and indirect benefits of the free trade agreement far outweigh the drawbacks. It will mean increased demand and prices that will relate to U.S. prices more consistently."

Elimination of all agricultural tariffs between Canada and the United States over the next 10 years will provide an incentive for Canadian packers to export more boxed beef, Hovan said. This will give Canada a challenge to expand its meat packing industry and export more meat products with value-added in Canada.

"Quotas on live animal and fresh meat products will be eliminated, allowing Canadian producers uninterrupted access to U.S. markets. Canadian livestock producers will be the clear winners as a result of this provision enabling Western producers to target their export shipments on the supply/demand imbalance that exists in the Pacific northwest," he said.

"The Canadian livestock industry will benefit directly through expanded markets, elimination of quotas, reduction of tariffs and duties, and removal of inspection restrictions. Canadian producers will also benefit indirectly by, ultimately, lower feed grain prices and an improved environment for outside investment in the livestock industry."

(please turn to page 2C)

(continued from page 1C)

Under free trade, Canadian livestock producers will have to become as knowledgeable as the Americans about financial marketing strategies. Canadian producers also must "accept the likelihood" of reduced government subsidy payments, he said. "Maybe it's time we started to see ourselves as competitors in the global market, and began managing our resources accordingly."

—R.C.O.

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W B G A The BARLEY GROWER

December 1987

WBGA Activities Pick Up

Although the weather has provided little indication, the winter season is upon us as evidenced by the usual onslaught of meetings, seminars, conventions and trade fairs. The WBGA is in full swing once again, attending many of these functions to learn, inform or lobby on behalf of its membership.

On October 29, I attended the Annual Meeting of the Western Grain Standards Committee in Winnipeg. This committee primarily selects and recommends standard samples of each statutory grade for each crop year. As well, some proposed grade changes are discussed. Oats will now be graded Canada Western Number 1, 2, 3 and 4, effective August 1, 1988. With the increased production of green peas, a request was received by the specialty crop committee for the establishment of a grade schedule for green peas, also to be effective August 1, 1988. A report was given on the developments for manufacture of equipment to measure chlorophyll levels in rapeseed and canola. Instruments are still being tested so chlorophyll as a grading factor will not be implemented until at least August 1, 1989.

On November 16, Dave Hueppelsheuser, Peter Edgar and Ed Armstrong traveled to Edmonton to meet briefly with the Alberta Minister of Agriculture, Peter Elzinga. They discussed several issues, including the Crow Benefit method of payment which he assured us they are still working on. This meeting was prior to the disappointing announcement that federal Transport Minister John Crosbie made at the Manitoba Pool Elevators Annual convention stating that *"I do not propose to amend the Western Grain Transportation Act during the balance of the government's mandate."* It appears this issue will stew on the back burner until the next federal election. Other discussions covered the producer car issue, the crop insurance review and our upcoming seminar program of which the Minister was particularly pleased with our effort and our content.

Dave Hueppelsheuser returned to Edmonton on November 24 with Gordon

See **Harvie**, page 8

Pay-The-Producer Closer

Alberta Wheat Pool and feds agree to discuss ways to change the method of payment.

It is just possible that the door is opening for a change in the method of payment of the Crow benefit.

After years of stonewalling the idea, the Alberta Wheat Pool and the federal government have agreed to join the provinces of Alberta and British Columbia in studying just how the benefit could be paid to producers instead of the railways.

Alberta's Economic Development Minister Larry Shaben announced the "breakthrough" December 8. Meanwhile, he said he has asked Hugh Planche, his predecessor, to remain until March as the province's lobbyist on the issue. That's when Shaben hopes a plan can be devised.

"We believe that a mechanism can be designed to demonstrate to Ottawa we can deal with concerns about distortion." His objective is to have Ottawa at least implement a five year pilot project in the two westernmost provinces. Ottawa has not yet approved the idea of the experiment but Shaben hopes the four parties can propose a plan Ottawa will be willing to try.

Unfortunately, according to Finance Minister John Crosbie, it won't happen until a new Parliament is elected and that might not be for some time yet, given the adverse polls for the Conservatives. A change in ruling party could bring the whole process to a halt once again.

The Western Barley Growers Association applauds this initiative. However, it is a grave concern if the involvement in the process includes only these four parties, two of which oppose the idea of paying the producer. There are several organizations such as ourselves and the 93,000 member UGG who would want to ensure the idea of paying the farmer gets a full and fair hearing. There is too much at stake to take half measures.

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Free Trade Deal Finished

Selected excerpts show agriculture still in good shape under the pact.

The free trade deal has been tabled in the Commons and the results are still acceptable to most of the farm community. No surprises have been sprung on farmers over the agreement in principle. If anything, clarifications make the deal even better.

Canadian farmers export almost $3 billion in agricultural products to the United States, one-third of our total agricultural exports. The agreement is meant to make our access to that market more open and more secure while at the same time preserving our existing structures and Canada's ability to devise policy suitable to our needs. The government feels this has been accomplished.

Canada and the United States have agreed to eliminate all tariffs on agricultural goods traded between the two countries over the next 10 years. However, each country still has the right to maintain regulations to protect human, animal and plant health and safety. Such technical barriers, including packaging and labelling requirements, should not create unnecessary barriers to trade as agreed under the Tokyo round of GATT (General Agreement on Tariffs and Trade).

Export subsidies to each other are eliminated, although the pact does not prevent them from being used in trade with other nations. Domestic subsidies are still allowed, but the pact could change the way in which they are paid.

The two countries will exempt each other from restrictions under their respective meat import laws allowing free trade in beef and veal. Health laws are being improved in the U.S. thus protecting Canadian herds from diseased imports.

Countervailing duties may still be imposed in cases where there is a clear, unfair advantage. However, the process is subject to rulings by the new tribunal which ensures that law and not politics is being applied.

The pact preserves marketing boards, although they are a target of international criticism. It also gives Canada the right over the next 20 years to restore temporary tariffs on fruit and vegetables if our market becomes flooded with cheap imports.

Despite its opposition to free trade, the Canadian Federation of Agriculture could find no new bogeymen in the final draft. Said Peter Marten, CFA's Executive Director, "There's nothing terrible in there. There's no hidden agenda that we can find."

Selected Details

Subsidies

"The Parties agree that their primary goal with respect to agricultural subsidies is to achieve, on a global basis, the elimination of all subsidies which distort agricultural trade, and the Parties agree to work together to achieve this goal, including through multilateral trade negotiations such as the Uruguay Round.

"Neither Party shall introduce or maintain any export subsidy on any agricultural goods originating in, or shipping from, its territory that are exported directly or indirectly to the territory of the other Party...

Each party shall take into account the export interests of the other Party in the use of any export subsidy on any agricultural good exported to third countries, recognizing that such subsidies may have prejudicial effects on the export interests of the other.

Canada shall exclude from the transport rates established under the Western Grain Transportation Act agricultural goods originating in Canada and shipped via west coast ports for consumption in the United States of America."

Market Access For Grain

"Commencing at such time as the level of government support for any of the grains wheat, oats, or barley in the United States of America comes equal to or less than the level of government support for that kind of grain, Canada shall eliminate any import permit requirements for wheat and wheat products, oats and oat products, or barley and barley products, as the case may be, originating in the territory of the United States of America, except that Canada may require the grain be:

"(a) accompanied by an end use certificate which has been completed by the importer of record declaring that it is imported for consumption in Canada and is consigned directly to a milling, manufacturing, brewing, distilling, or other processing facility for consumption at that facility;

"(b) denatured if for feed use; or

"(c) accompanied by a certificate issued by Agriculture Canada, or its successors, if for seed use."

The agreement also gives the right to impose fees or quantitative restrictions on imports of grain or grain products "if such imports increase significantly as a result of a substantial change in either Party's support support programs for grain." This applies to wheat, oats, barley, rye, corn, triticale and sorghum.

Levels Of Support

An annex to the agreement, which applies only until such time as import permits are eliminated, defines the calculation of support levels as "the average of the percentages...for the two most recent crop years for which data are available.

"Government support for wheat, oats or barley for a crop year shall be determined in accordance with the following formula, expressed as a percentage:

"Government Support equals Total Government Support divided by Adjusted Producer Value.

"Adjusted Producer Value means the value of production for wheat, oats or barley for that crop year plus direct government payments for that crop year.

"Direct Government Payments means payments that are directly made to producers of wheat, oats or barley and that are associated with the production of that grain for that crop year, excluding any such payment to reduce the costs of production.

"Total Government Support means all government programs or other means of government support directed towards affecting the income of producers of wheat, oats or barley from that grain for that crop year.

Packaging & Labelling

"The Parties shall, with respect to packaging and labelling of agricultural food, beverage and certain related goods for human consumption:

"(a) work toward the acceptance of dual declarations of content where the net quantity can be expressed in metric and United States units of measure, regardless of the order of the declaration;

"(b) work toward equivalent requirements for matters such as:

"i) nutrition labelling;

"ii) ingredient listing or declaration;

"iii) labelling terminology and definitions;

"iv) grading declarations; and

"(c) review container sizes, including can sizes."

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See - Pp2

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The BARLEY GROWER
October 1987

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Counting Blessings

Mother Nature can be so benevolent. Up until September we have had nothing short of bizarre weather patterns all year. Last fall we had one of the soggiest harvests on record followed by a balmy, open winter. Spring saw most of us drying up and blowing away until late rains salvaged what little crop remained. They also sparked a second growth which would be sure to wreak havoc at harvest as either frozen, green or both. Throw in a generous sprinkling of hailstones, a killer tornado and early August frost in some areas, and you have all the ingredients necessary for the final blow to an industry already staggering under disastrously low grain prices.

Then, finally, some good luck! It's been years since we've had a dry, warm harvest season like this one. It's benefits are difficult to measure, but are very substantial. Improved crop quality due to the weather provides the greatest benefit as the crop comes off dry and at a better grade. The extended growing season provided enough extra growing days in many areas to fill and ripen the late, second growth — again adding quality and quantity. Additional benefits to a dry harvest are earlier marketing to improve cash flow, reduced wear on equipment, fewer hours required to cover the field, less fuel burned, etc., as well as leaving October available for field work which will help put next year's crop off to a good start.

All these benefits add up to many millions of dollars indirectly saved or directly gained for producers — all because of an act of Mother Nature over which we have no control.

Perhaps just as important, good harvest weather boosts the morale of a shaken industry. Having the harvest run smoothly and on time relieves a lot of stress and anxiety. Somehow, an optimistic outlook is more prevalent within the farming community after such a season and makes coping with continually waning grain prices a little easier.

Free Trade

The free trade agreement reached recently should be welcome news to the barley industry. Although we export very little barley to the United States, we do export a lot of beef and, of course, barley is the key ingredient in the livestock feeding industry. About half the barley grown on the prairies is fed domestically to livestock. Without open access to that huge beef market Stateside, we would lose a major portion of our feeding industry, and that's our most valued and reliable barley market.

A Canada/U.S. trade agreement also has important indirect implications. We have set an important precedent for other countries attempting to establish trading agreements at GATT (General Agreement on Tariffs and Trade). If two of the friendliest nations in the world could not reach a trade agreement, it would set a negative tone at the multilateral trade talks at which many of the participants involved are openly hostile to one another.

A further advantage of the successful trade negotiation process is experience gained by each side. These were tough negotiations over a long period of time, but both countries should have gained valuable knowledge which could considerably aid the GATT talks.

Saudis Cut Barley Imports

Recently, the Saudi Arabians announced they have made dramatic changes to their barley subsidy program. It's been rumoured they are going to encourage domestic production by offering outlandish production subsidies to producers. As well, they are cutting subsidies to importers to discourage offshore purchases. These moves by Saudi Arabia could have a drastic effect on the international barley market. They have traditionally imported a substantial amount of barley from Canada, Australia, the United States and Europe. Last year they bought about two million tonnes from us, about one third of our total barley exports. Unfortunately, that sizable market may now disappear. Not only will we need to find a replacement market for our two million tonnes of barley, but other barley exporting countries will be doing the same and that could have a depressing effect on international barley prices.

This instance of massive subsidization by the Saudis and the negative effect their changes in policy will have on so many others exemplifies the need for an end to the protectionist movement so prevalent today. One hopes the GATT talks can eventually return a semblance of order to the marketplace by allowing all countries to compete on fair trading terms.

In light of the prospect of reduced barley exports, producers will have to closely appraise their barley marketing program, including the proportion of barley earmarked for sale to the Canadian Wheat Board. The present five bushel quota may be all we see this year and it is quite possible the contracts may be cut back as well. So plan accordingly.

See Harvie, page 8

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Screening of investment. Liberalization of investment rules will give Canadian business better access to Capital in the United States. Screening of indirect acquisitions, forced divestitures and the imposition of performance requirements on U.S. companies will cease, giving potential investors more confidence the rules won't be changed next year, something Canada has often done in the past to scare investment away.

Canadian Reaction

Many eyes were looking at the money market for reaction to the announcement. Would those who trade Canadian dollars consider the news good, bad or indifferent? Early signs were positive. The dollar rose and, as more became known, some were predicting the dollar could reach US$0.80.

The politicians reacted differently. Liberal and NDP Premiers (Peterson of Ontario, Ghiz of PEI and Pawley of Manitoba) immediately rejected it. Two others were concerned about aspects without rejecting it (Peckford of Newfoundland who wants Labrador power to be included under the energy provisions, and Hatfield of New Brunswick who is in the process of losing an election to Liberal leader Frank McKenna). The rest, after receiving a briefing on the terms, supported the federal initiative.

In the Commons, opposition MP's have vilified the government and are in the process of whipping up public emotion against the deal. The emotional approach makes it very difficult for people to assess the pact objectively. For example, both Liberals and New Democrats intend to make political hay with the provisions affecting the Canadian Wheat Board, claiming the elimination of permits is a serious downgrading of the Board's powers.

However, farmers should not fear minor changes in Board operations. The WBGA proposal for a dual market (see *Dual Marketing — A Serious Proposal*, Barley Grower, February 1987) would not only accommodate the essentials of this and any future trading agreements, it would also strengthen the operations of the CWB while making room for the private trade to pick up the spot markets such as those which will open in the U.S. Also, such critics claim the elimination of the two price system for wheat will cost prairie farmers $200 million a year. This ignores the fact that much of that trade will be lost to Ontario producers long before any American grain could be sold in Canada. It's also relatively small potatoes to an industry worth about $7 billion a year.

That's not to say that some agricultural sectors have legitimate concerns. First, the wine industry believes it was thrown away to save the Canadian market for brewers. Beer will remain protected and fragmented on a provincial basis, something which eliminates the economies of scale and which prevents breweries from becoming large enough to compete in a continental market. (That means no increase in the market for malt barley for the time being.) American wines, on the other hand, will be allowed freer access to the Canadian market. Domestic wine producers fear it will force them out of business.

Fruit and vegetable growers are also angry about the deal since restrictions on horticultural products from the States will be removed over the next decade.

But all is not negative. The freer trade is a good deal for livestock producers. In fact, cattlemen on both sides of the border have been working for years to eliminate trade barriers and are pleased the two governments have formalized the process. Charlie Gracey of the Canadian Cattlemen's Association expects exports of beef and pork to increase sharply because Americans enjoy eating the leaner meat the Canadian industry produces. That means better livestock markets and more work for the packing industry.

Many grain organizations, the WBGA included, welcome the agreement. It removes trade barriers and provides new marketing opportunities in the U.S. Wheat Board Minister Charlie Mayer also noted it would given canola producers and processors potential for substantial growth, encouraging more production of canola, an important cash crop, and make crushing profitable again. Honey producers (abundant in canola country) are pleased because the agreement should mean a dismantling of American support programs that make it impossible for Canadian producers to compete in the U.S.

See Freer Trade, page 8

Subsidies the Problem — EEC Won't Budge

The United Nations Food and Agriculture Organization says world agriculture trade is in the grip of a major crisis made worse by a surge in protectionist measures which have seldom been stronger.

FAO Director-General, Edouard Saouma told the FAO Committee on Commodity Problems, "Agriculture has been deeply scarred in the past two years by a surge of 'beggar-thy-neighbour' trade measures, particularly export subsidies, on a scale not seen for over half a century." He noted the volume of agricultural trade has remained stagnant for the past five years. He added that despite some positive developments, "the bad news remains abundant and disturbing... Export prices as a whole still fall considerably short of the level reached at the beginning of the decade."

Part of the bad news is that the EEC's efforts to draw up a budget for next year collapsed. All 12 countries in the EEC agree present resources are not enough to cover the community's spending for 1988. But they disagree over whether to spend less or raise more money. Spain, Britain and Greece remain deadlocked with the rest of the community over farm supports. Britain would have the EEC spend less. Spain and Greece want the EEC to spend more, especially in the poorer Mediterranean countries and Ireland.

Meanwhile, the EEC has rejected the U.S. proposal to eliminate all farm subsidies that affect markets or production, adding any reform of world trade must let it continue subsidizing its farmers. EEC Farm Commissioner Frans Andriessen says, "I don't think it's realistic that all forms of support or protection will be abolished by the end of the century. At least for the Community, it's not possible... The United States has proposed nothing to resolve the short term problems. When you're as aggressive as they are on the world markets, it's difficult to create a favourable climate for agreement in the long term."

The EEC is proposing world wide supply management (quotas to manage market share) which would allow it to keep the markets it has taken by subsidizing the export of its surpluses. Their practice led to an export subsidy war and has depressed market prices.

Canada is not blameless. We too have an export subsidy on grain masquerading as the farmer's Crow Benefit but paid to the railways only on the grain and grain products moved to export position.

Chairman GIBBONS. Thank you, sir.

Next, Red River Valley Sugarbeet Growers Association, Robert Vivatson, president.

STATEMENT OF ROBERT VIVATSON, PRESIDENT, RED RIVER VALLEY SUGARBEET GROWERS ASSOCIATION

Mr. VIVATSON. Thank you, Mr. Chairman.

The first thing I would like to do is to thank you for the opportunity for me to appear here and give this testimony.

My name is Robert Vivatson. I am a farmer from Cavalier, ND, and I am president of the Red River Valley Sugarbeet Growers. I represent sugarbeet growers in the Red River Valley in Minnesota and North Dakota.

Our growers are concerned about the provision of the Canadian free trade agreement that pertains to the 10 percent sugar blends. It presently authorizes products that contain 10 percent sugar or less free access to the U.S. market.

I guess what I would like to demonstrate now is what has happened in the last few years in reference to the amount of sugar in this type of product that has come into this country.

In 1981, sugar containing products amounted to 671 million pounds. In 1986, this has grown to 1.5 billion pounds and the vast majority of that is from Canada.

To demonstrate how rapid these products can come in, part of the 1988 quota, and this is a particular quota of sugar dextrose blends, is 84,000 tons, and this particular quota was filled at 48 hours.

The point is that what I am trying to emphasize is that there is a great deal of sugar coming from our neighbors to the north, and it is basically circumventing the quota.

Presently, the Canadian farmers produce less than 10 percent of their sweetener needs. That leaves 80,000 or 90 percent that has to be imported or about a 120,000 tons. Excuse me. They produce 120,000 tons, they import the rest.

I would like to emphasize that we sympathize with our fellow sugarbeet growers in Manitoba and Alberta. Our quarrel is not with them. Our objections are in regards to having sugar that is imported into Canada from countries like Cuba, South Africa, and Nicaragua and then exported in various forms to the United States, which is blatantly circumventing the quota.

We fully understand and desire that the Manitoba and Alberta sugarbeet growers be in a position to increase their production. They have a large domestic market and do not have the cooperation of their government right now to expand any production.

Presently, we do not allow sugar from Cuba, South Africa or Nicaragua to enter this country. We believe via this agreement, we will be allowing this to happen. We feel the only people or only individuals that will benefit from this agreement are, No. 1, the Canadian offshore refiners, and, No. 2, the Canadian sweetener manufacturers.

The additional sugar entering the U.S. market will undermine our present program and this becomes the real issue. The real losers in this agreement are the U.S. producers and our friends in the Caribbean and the Philippines.

We, as sugar growers, are well aware of the impact sugar has in the Caribbean and the Philippines. By bringing in more sugar-containing products from Canada or encouraging this, the quota is going to be adversely affected.

Presently, there is a study being conducted by GAO on sugar blends that circumvent the quota. The study is not available, but the preliminary estimates indicate that 250,000 to 300,000 tons of sugar are circumventing the quota, and, gentlemen, that is a very significant amount.

I would like to also emphasize we support free and fair trade. It is very difficult to be against that and we are not, but the way this free trade agreement can be interpreted could have a disastrous effect on American sugar producers.

Perhaps we have some solutions to offer. First of all, we feel that the quantity of sugar allowed under this agreement should be limited to Canadian production. We see no reason why foreign sugar exported under a subsidy or sugar produced by countries that we do not trade with for political reasons should have an avenue into our market via this agreement.

We would also recommend that a product-by-product review of imports from Canada be included. This would aid in preventing products entering this country solely to circumvent the quota. An example of this would be a cake mix. Basically, a cake mix probably takes at least 15 percent sugar, and that cake mix should be manufactured in the United States.

What could be done and by examining each product would eliminate this, ten percent of the sugar could be placed into Canada, the product imported and the additional sugar added over here. Loopholes, such as this one, need to be closed. They present a real problem.

My last portion of the statement would be that we support free and fair trade, and I would hope you would consider these solutions that we have offered to solve the problem and be considered in the final regulations.

Again, I would like to thank you for the opportunity.

[Statement of Mr. Vivatson follows:]

STATEMENT OF ROBERT VIVATSON, PRESIDENT, RED RIVER VALLEY SUGARBEET GROWERS ASSOCIATION, FARGO, ND

Mr. Chairman and members of the committee, I wish to first thank you for the opportunity to give this testimony.

I am Robert Vivatson of Cavalier, North Dakota. I am President of the Red River Valley Sugarbeet Growers Association. I represent sugarbeet growers in the Red River Valley of Minnesota and North Dakota.

Our growers are concerned about the provision of the Canadian-American Free Trade Agreement which pertains to the 10% sugar-blends. It presently will authorize products containing 10% or less sugar, free access to the U.S. market. There has been a large increase in this type of sugar-containing product imports. In 1981 sugar-containing imports were 671 million lbs. In 1986 1.5 billion lbs. were imported. Most of this was from Canada.

The existing 1988 quota of sucrose-dextrose blends was 84,000 tons. This particular quota was filled in 48 hours.

The point is, that a great deal of sugar is coming in from our neighbor to the north, which circumvents the quota.

Presently, the Canadian farmer produces less than 10% of their sweetener needs—approximately 120,000 tons. The other 90% is imported. We sympathize with our fellow sugarbeet producers in Manitoba and Alberta. Our quarrel is not with them. Our objections are in regard to having sugar imported into Canada from countries like Cuba, South Africa, and Nicaragua—then exported in various forms to the United States to circumvent the quota. We fully understand the desire of a Manitoba and Alberta sugarbeet grower to be in a position to increase his sugar production, if he could have a larger share of the Canadian domestic market.

Presently, we do not allow sugar from Cuba, South Africa, and Nicaragua to enter this country, and via this agreement, we will be allowing this. The only benefit from this agreement is for Canadian offshore refiners and Canadian sweetener manufacturers.

The additional sugar entering the U.S. market, undermines the present program and becomes the real issue. The real losers in this agreement will be U.S. producers and our friends in the Caribbeans and Philippines.

We, as sugar growers, are well aware of the impact sugar has on the Caribbeans and Philippines. By bringing more sugar-containing products from Canada, the quota will be adversely affected.

Presently, there is a study being conducted by the GAO on sugar-blends that are circumventing the quota. The study is not available yet, but preliminary estimates indicate 250,000–300,000 tons of sugar are circumventing the quota. That is a substantial amount.

We support free and fair trade, but the way this Free Trade Agreement can be interpreted—could have a disastrous effect on American sugar producers.

We feel that the quantity of sugar allowed in under this agreement, should be limited to Canada production. We see no reason to allow foreign exporters who export subsidized sugar, an access to U.S. markets. We also feel that countries who are not trading partners of the U.S., should not receive access to our markets via this agreement.

We recommend a product by product review of imports from Canada. This will also aid in preventing products from entering, which are solely made to circumvent the quota. An example of this would be cake mixes that contain 15% sugar. That cake mix should be manufactured in the U.S. Examining each product would prevent Canadian manufacturers from putting 10% sugar in the mix and importing it, and then adding the additional sugar. Loop holes such as this must be closed.

The Red River Valley Sugarbeet Growers Association supports free and fair trade. We believe that these are solutions to our problem, and hope you would consider the ones we have presented.

Thank you for the opportunity to testify.

Chairman **Gibbons**. Yes, sir. We thank you.

I come from a State that produces some sugar, also, and I have just a scant amount of knowledge about it, but it is certainly a perplexing situation.

Now, the North Dakota Corn Growers Association. These are the big sweetener producers of the world. Corn, I think, was 5 percent of America's sweetener consumption in 1970 and now it is 55 percent of America's consumption.

STATEMENT OF ROBERT G. THOMPSON, PRESIDENT, NORTH DAKOTA CORN GROWERS ASSOCIATION

Mr. **Thompson**. Good morning.

Chairman, Committee on Ways and Means, I am Robert Thompson, president of the North Dakota Corn Growers Association. I am a farmer from Page, N. Dak. I grow corn on approximately a thousand acres, and I love growing corn, and would like to be able to market my corn.

If you think you are concerned about the weather today in North Dakota, my daughter is getting married tonight and she is really concerned about the weather.

Mr. **Daws**. A honeymoon at home.

Chairman **Gibbons**. Love conquers all. That is all right.

Mr. THOMPSON. Okay. The North Dakota Corn Growers Association and the National Corn Growers Association as passed at their recent convention in St. Louis 2 weeks ago, support the concept of the free trade agreement; however, oppose the free trade agreement as now structured because of the present countervailing duty and other concerns.

The free trade agreement must be amended for agriculture. The countervailing duty was not affected by the free trade agreement and this exclusion is a major concern for the corn growers.

We are appreciative of Canada's reduction of the countervailing duty from 85 cents to 36 cents U.S. dollars on February 5, 1988, but still it is not feasible to ship corn to Canada.

Now, several concerns that the corn growers have are as follows—these are concerns of the North Dakota and the National Corn Growers Association:

The Canadian countervailing duty has continued against U.S. corn exports to Canada. No existing disputes, including the corn countervailing duty, were resolved or overturned in the free trade agreement. On this issue alone, U.S. corn growers have a very strong base from which to be concerned, if not outright opposed to the free trade agreement.

In addition, one must question the workability, if not the constitutionality, of the dispute settlement process contained within the agreement. How disputes are to be resolved and how a chairman is to be selected are of particular interest. Countervailing duties reached before January 1, 1989, will not be reviewed. I am talking about the binational committee, where two from Canada and two from the United States are appointed and they select the chairman and settle these disputes.

A second concern is Canada's sugar quota with the United States and it is preserved. More importantly, Canada is protected from any further tightening of the U.S. quotas and the United States will allow products containing less than 10-percent sugar to be imported into the United States outside the quota. To a large extent, quota circumvention of this type is the single largest contributor to the growing pressure on the U.S. sugar program.

Furthermore, some level or volume of sugar or Canadian sugar imports are simply raws transshipped from Cuba. Cuba has no quota. As a matter of fact, right now, corn is being shipped to Cuba and I presume that sugar is being shipped back to Canada. This is how things have changed in the past few years.

Third, section 22 import restrictions are lifted. Section 22 protection is the first and last line of defense against unfair trade practices. While it applies to wheat more than corn, section 22 elimination may well be an example of things to come from all U.S. producers, and I guess we have talked about section 22.

Number four is the Crow's Nest or the Great Western Transportation Act. Subsidies are eliminated on Canadian shipments through western ports into the United States. Now, shipments to the west not into the United States are still subsidized. However, all transportation subsidies for grain shipped through Thunder Bay and other eastern Canadian ports have not been removed. This may allow Canadian grains to unfairly compete in either the United States—displaying the United States grains, most notably barley and wheat—or in third country markets as all U.S. subsidies in those markets must not unfairly displace Canadian exports.

A fifth concern is with regard to the grain licenses. Canada will eliminate the licensing requirements as soon as support levels for products in question are deemed to be equal on either side of the border. Our experience with the Canadians with the countervailing duty where they claim some 75 programs constitute subsidies raises serious questions on the effectiveness of this provision.

We are still dealing with the countervailing duty, and I am sure you are quite aware and we just have not been able to get anywhere on that issue.

No. 6 is the United States and most notably the corn growers have some experience with free trade zones. The Caribbean Basin Initiative has created nothing short of havoc for the National Corn Growers Association in sugar and ethanol. The prospects of the United States-Canadian Free Trade Agreement, unfortunately, are not much better.

Seven, the Canadian corn production is up 22 percent since 1982. United States exports to Canada are down 47 percent in the same time period. Canada now exports more corn to the United States than we export to Canada. Why is there a 36-cent countervailing duty when there is more corn coming from Canada down in the United States than there is from the United States going into Canada.

Why isn't this countervailing duty resolved? We really question that if something so simple as the corn countervailing duty cannot be resolved, then how can problems in Hard wheat and barley be resolved.

The preamble of the 1985 Food Security Act states there shall be an ample supply of food. There are approximately 5 billion bushels of U.S. corn in storage at this time, guaranteeing cheap food and larger subsidies as a matter of preference as dictated by the U.S. Congress. This is not a free market.

Subsidies are based on surpluses which cause inelastic demands, flat prices, low revenues, and other similar disruptions to price in the supply-demand equation. Subsidies should not be based on unfair trade practices, such as Canadian licensing requirements, commodity dumping, price setting manipulations, and others.

The North Dakota Corn Growers Association and the National Corn Growers Association support the concept of the free trade agreement. However, Canada has not been workable in reference to their countervailing duty against U.S. corn. What makes next year different? Most North Dakota corn growers also grow wheat. The free trade agreement is a complete disaster for North Dakota wheat producers located near the geographical center of North America because of Canadian transportation subsidies.

The total exports from the United States to Canada were $54 billion last year, whereas the total exports from Canada to the United States were $70 billion, and this $70 billion accounts for 78 percent of the Canadian exports, and 18 percent of the U.S. imports. The total ag. trade accounts for 3 percent of the total trade of $3.5 billion. The auto trade is $46 billion. You can see where the concern is on the free trade agreement.

We realize that the free trade agreement may be necessary for 97 percent of the trade with Canada; however, changes are needed for agriculture. Zero carryover of grains, no subsidies, and high prices is one end of the spectrum, and possibility of free trade agreement working in that type of situation. Large carryovers of grain, no subsidies, low corn prices, because of international market manipulation and government stocks will not be tolerated by the corn growers.

The North Dakota Corn Growers Association and the National Corn Growers Association are not against free and fair trade, only inequities of this agreement.

Do you have any questions?

[Statement of Mr. Thompson follows:]

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TO: Representative Sam M. Gibbons, Chairman
Committee on Ways and Means

FROM: Robert G. Thompson, President
North Dakota Corn Growers Association

SUBJECT: Free Trade Agreement

The North Dakota Corn Growers Association supports the concept of the Free Trade Agreement; however opposes the Free Trade Agreement as now structured because of the present countervailing duty and other concerns. The FTA must be amended for agriculture.

The CVD was not affected by the FTA and this exclusion was a major concern of the corn growers. We are appreciative of Canada's reduction of the CVD from $.85 to $.36 U.S. dollars on February 5, 1988.

The major concerns of the Corn Growers are as follows:

1) The Canadian Countervailing Duty (CVD) is continued against U.S. Corn exports to Canada. No existing disputes, including the Corn CVD, were resolved (or overturned) in the FTA Pact. On this issue alone, U.S. Corn Growers have a very strong base from which to be concerned if not outright opposed with the FTA. In addition, one must question the workability, if not the constitutionality of the "dispute settlement" process contained within the agreement. How disputes are to be resolved and how a chairman is to be selected are of particular interest. CVD's reached before January 1, 1989 will not be reviewed.

2) Canada has a sugar quota with the U.S. and it is preserved. More importantly, Canada is protected from any further tightening of U.S. quotas and the U.S. will allow products containing less than 10 percent sugar to be imported into the U.S. outside the quota. To a large extent, quota circumvention of this type, is the single largest contributor to the growing pressure on the U.S. sugar program. Furthermore, some level or volume of Canadian sugar imports are simply "raws" transhipped from Cuba (Cuba has no quota).

3) "Section 22" import restrictions are lifted. Section 22 protection is one of the first and last lines of defense in protecting U.S. producers from unfair trade practices. While it applies to wheat more than corn, Section 22 elimination may well be an example of things to come for all U.S. producers.

4) "Crow's Nest" or Great Western Transportation Act subsidies are eliminated on Canada shipments through western ports into the U.S. However, all transportation subsidies for grain shipped through Thunder Bay and other Eastern Canadian ports have not been removed. This may allow Canadian grains to unfairly compete in either the U.S. (displacing U.S. grains - most notably barley and wheat) or in "third" country markets as all U.S. subsidies in those markets must not unfairly displace Canadian exports.

5) With regard to grain licenses, Canada will eliminate the licensing requirements as soon as support levels for products in question are deemed to be "equal" on either side of the border. Our experience with Canadians - through the CVD, where they claimed some 77 programs constituted subsidies raises serious questions on the effectiveness of this provision.

6) The U.S. (and most notably the Corn Growers) have some experience with "free trade zones". The Caribbean Basin Initiative (CBI) has created nothing short of havoc for NCGA in sugar and ethanol, the prospects of the U.S. Canada FTA unfortunately are not much better.

7) Canadian Corn Production is up 22% since 1982. U.S. exports to Canada are down 47% in the same time period. Canada now exports more corn to the U.S. than we do to Canada.

The preamble of the 1985 Food Security Act states "There shall be an ample supply of food". There are approximately 5 billion bushels of U.S. corn in storage at this time guaranteeing cheap food and larger subsidies as a matter of preference as dictated by the U.S. Congress. This is not a free market. Subsidies are based on surpluses which cause inelastic demands, flat prices, low revenues, and other similar disruptions to price in the supply-demand equation. Subsidies should not be based on unfair trade practices such as Canadian licensing requirements, commodity dumping, price setting, manipulation and others.

The North Dakota Corn Growers Association and the National Corn Growers Association support the concept of the FTA; however, Canada has not been workable in reference to their CVD against U.S. corn. What makes next year different? Most North Dakota corn farmers also grow wheat. The FTA is a complete disaster for North Dakota wheat producers located near the geographical center of North America because of Canadian transportation subsidies.

The total exports from the U.S. to Canada were $54 billion last year; whereas, the total exports from Canada to the U.S. were $70 billion which accounts for 78% of Canada's exports and 18% of the U.S. imports. The total ag trade accounts for 3% of the total trade or $3.5 billion. The auto trade is $46 billion.

We realize the FTA may be necessary for 97% of the trade with Canada; however, changes are needed for agriculture. Zero carryover of grains, no subsidies and high prices is one end of the spectrum. Large carryovers of grains, no subsidies, and low corn prices because of international market manipulation and government stocks will not be tolerated by the corn growers.

The North Dakota Corn Growers Association and the National Corn Growers Association are not against free and fair trade, only the inequities in this agreement.

Chairman. GIBBONS. Yes, sir.

First, we want to say to you and your new son-in-law and your daughter, we wish them the best of everything.

Mr. THOMPSON. Thank you.

Chairman GIBBONS. And we know that this will be a memorable occasion, not only the weather but everything else for them.

Let me comment, first of all, about the concern about the dispute settlement mechanism. I know that some lawyers have expressed some concern about it. We have a great deal of research which convinces me that it is a constitutional process, and it is a substantial step forward in getting some of these disputes settled.

As you know, we have had disputes ever since we have been a nation, but we have never worked out a mechanism to settle them, and these disputes go on and they not only affect themselves but they affect the whole relationship, and it was with that desire that in this agreement, we came up with a dispute settlement mechanism.

But, as I say, the case law and the constitutional research convinced me that it is a constitutionally-agreeable acceptable process. Of course, the Supreme Court of the United States will have the last guess at that, and I am sure they will take it without a whole lot of urging.

But I think it will work and I hope it will work because it will mean that in the kind of frustrating experiences you have had, that we can settle these arguments. You will get a substantial review of Canadian cases which you cannot now get, and you will get the—the Canadians will get a substantial review of our cases which they cannot now get, and I think only time will tell as to whether that is enough to settle it, but here, two sovereign friends have decided to bind themselves based upon the settlement of those agreements.

I hope it can work. If it cannot, there is not much hope for mankind on this planet. I am trying to educate myself on the sugar matter because, as you pointed out, it is a tremendous problem.

I am very familiar with the current sugar program, how it works. I am also very familiar with the fact that between the United States and the European Community, we have impoverished the Caribbean in the last 4 years. They have lost 82 percent of their U.S. sugar market in 4 years, and that was about the only cash crop they had.

You may say, well, we are not much worried about the Caribbean, but there are 40 million people that live in the Caribbean. They are our next-door neighbors and as we know from day-to-day, it is a very unsettling area of the world, and all that we seek to do is to give them an opportunity to earn a living by trading with us. They are not capable of doing that now because—mainly because of our sugar program and the European sugar program.

I realize we cannot settle that without working out some kind of arrangements with the Europeans, too. And, so, I am just recognizing it as a very complex project. I appreciated very much what the beet growers have had to say and what the corn growers have had to say about this sugar matter. It is a very serious process, a very serious matter, but I have not come to the conclusion yet, and the more I study, the more complicated I realize it becomes.

But you can be heartened by the fact that the statistics show that despite the fact that we are trying to lose weight, you can see that I have not done very well, Americans are consuming more pounds of sweetener per year than they ever have, up from, I think, about a 130 pounds in 1970 to a 150 pounds this last year, and very little of that is artificial or no caloric sweetener.

So, there is a big market out there. I do not know how to get it into the free market stage, but I appreciate what you have had to say today.

Don?

Mr. PEASE. Yes. Thank you, Mr. Chairman.

We have talked at length this morning about the subsidies being unequal between Canada and the United States, particularly wheat, and that wheat going into Canada is subject to the National Wheat Board.

Is that true also of sugarbeets going into Canada? Do we export sugarbeets to Canada?

Mr. VIVATSON. Mr. Pease, Congressman Pease, no, we do not export any sugarbeets into Canada whatsoever.

Mr. PEASE. And why is that?

Mr. VIVATSON. I do not know exactly if we can legally do it, but the price is substantially less up there for sugar. They buy sugar on the world market. So, there would basically be no advantage for us.

I guess what I would like to point out, I live very near the border and they have a struggling sugar industry up there. In fact, there has been a number of springs that have come along and they did not even know if they were going to plant. That is kind of the position up there that that government has taken.

The sugar industry is not very important to them. It has not affected their consumer prices. If that becomes an issue, there has been a study done that it takes about 1 minute and 47 seconds for the American worker to earn a pound of sugar. That is the least in the world. In Canada, it is 2 minutes and 2 seconds.

So, even them buying sugar at the world prices has not impacted their consumers. It is on the negative side.

Chairman GIBBONS. Don, you can correct me if I am wrong on this. Our sugar sells for about 22 to 23 cents a pound, something like that?

Mr. VIVATSON. Yes, sir.

Chairman GIBBONS. The Canadians can buy sugar from Cuba at about six cents a pound or something like that.

Mr. VIVATSON. World market now is about 8.

Chairman GIBBONS. Six or eight cents a pound. So, we do not really export any sugar. We will soon, if the trends continue, we will soon have to find something to do with the sugar. We are almost sugar substitution in this country at the prices that we now support.

Mr. PEASE. Mr. Chairman, just a little bit off the subject, but I am curious to know about how in the world the Canadian sugarbeet growers survive in the face of 6 cents a pound competition?

Mr. VIVATSON. Congressman Pease, they have a program where they basically get the world price and then the provinces subsidize and the Federal Government subsidizes to a certain level.

Mr. PEASE. I see. And as we flew in yesterday, we saw a lot of acres which apparently were planted or are planted with sugarbeets. If our subsidies were to be ended or curtailed substantially, could North Dakota farmers diversify into some other product area or not?

Mr. VIVATSON. Well, we have a vast investment in the sugar industry and the sugar industry is the heart of this valley here, from my position. The economic impact into this valley of Minnesota and North Dakota is in the excess of a billion dollars.

If we were to end the sugar program, the alternative crops are now in surplus, wheat, corn, that type of thing. Besides destroying the valley's economic base, we would not have any viable alternatives.

Mr. PEASE. I see. Thank you, Mr. Chairman.

Mr. VIVATSON. Maybe I could comment just a little more.

We—as we feel as sugarbeet growers and as sugar producers in the United States, that if it was a free and level playing field, we could compete with anybody in the world. We have the assets, the resources, but we cannot compete against foreign pocket books, foreign government pocket books.

Specifically, the real culprit in this whole thing started about in 1974 when we went without a sugar program. The EEC, who was the net exporter or net importer, I am sorry, in 1974, decided that was a good signal for them to increase their production, and they have gone from a net importer in 1974 to the largest exporter in the free world today. They now export about 4.5 million tons of sugar.

I am sorry. Excuse me.

Mr. PEASE. That is all right. Could you compete without subsidies of any kind against sugar cane producers in the Caribbean?

Mr. VIVATSON. The cost of production of sugar cane all balanced is about 16½ cents in the Caribbean a pound. We are supporting our production at 18 cents a bone rate raw basis. It costs 1½ cents to get it here. So, we are basically in the same ballpark, everything considered equal, even.

Mr. PEASE. Do I take it from what you say that the Caribbean nations are losing 10 cents on every pound of sugar they grow?

Mr. VIVATSON. Yes, they are. They are losing. They are below the cost of production, and they subsidize in different ways, too. I guess another way to view that, you have to consider the wage scale.

We talked about environmental considerations. We are strapped with a great deal. We have invested millions of dollars in this valley in our factories to meet the pollution standards. That is not an issue in the Caribbean.

They are allies. I mean, you know, they are our friends. We have to take care of them.

Mr. PEASE. Sure. Mr. Thompson, did I understand from your testimony that Canada is protected from any further tightening of U.S. quotas on importation of sugar or sweeteners?

Mr. THOMPSON. Yes. Basically, we are set at a certain sugar quota for the year.

Mr. PEASE. I do not know whether it is or not. I am just trying to find out the information.

Mr. **Vivatson**. Maybe I could comment on that, Congressman Pease.

The sugar quota from Canada now is only about 7,000 tons, which is not very large. Shrinking that would not really have any impact.

Mr. **Pease**. I see. Thank you, Mr. Chairman.

Chairman **Gibbons**. Yes, sir. Mr. Dorgan?

Mr. **Dorgan**. Just briefly, so that we can move along on the agenda.

Let me ask one question of each of you. I think the testimony you have given is excellent testimony that will contribute to our understanding from the perspective of barley and corn and sugarbeets.

Each of you has provided a litany or a menu of concerns about this agreement. Would you tell us what is the major difficulty?

For example, Mr. Thompson, in your testimony, you have outlined a number. What do you see as the single biggest problem?

Mr. **Thompson**. Well, basically, in our litigation with Canada concerning the countervailing duty, it was determined that of 85 cents of the countervailing duty, 81 cents was subsidies through the deficiency payment.

They claimed that 81 cents of the subsidy was the deficiency payment, and the other 3 or 4 cents are basically money the farmer gets for planting trees, et cetera. You understand what I am talking about. They are minimal effect.

It turned out that the countervailing duty was reduced from 85 cents down to 36 cents. We find that the whole issue was more or less a political issue to get a farm program started in Canada where payments are being made to the farmers and so on.

And that has been the problem with the whole situation. It is an arbitrary figure. We feel that when there is more corn coming down than there is going up—it just happens that North Dakota's market is moving corn up—we cannot figure out why that countervailing duty cannot be resolved.

And I guess when you talk about if they are going to say 81 cents of that is deficiency payment, then are we going to cut our deficiency payment back to go in line with Canada when already at this time, Europeans get subsidies that probably are several times over what our subsidies are.

Now, I contend that subsidies are based on surpluses, not on market manipulation between the United States and Canada, and I just feel that it should remain that way.

Mr. **Dorgan**. Robert, you might give us the barley priority here. I think the sugarbeet issue, the priority is self-evident in your testimony.

Mr. **Daws**. There is probably two things that might go hand in hand if I was to prioritize and they are all pretty equal in our concerns. But it is the licensing and the transportation issue, and the fact that they can bring their barley into the Thunder Bay area, put it right into the lakes and thus go right into the malt houses, which the largest part of them are in the Milwaukee area, which is right on the Great Lakes.

And the licensing part of it. So, maybe if we would have licensing or maybe denaturing their barley coming in here, maybe that would prevent. If they had to denature all their barley coming in here, so they knew it was Canadian barley, maybe that would not get into some of our products in this country.

So, maybe if we could have the same provisions that they have, I do not know why we should have to denature our license going that way and they not coming this way. Like I said before, there has not been a license issued for U.S. barley going into Canada since 1982, and we have had instances where different people have wanted to export it to the Canadian feeders, but the Canadian Wheat Board would not give them a license to go in there.

So, I think that these two issues would probably be our prime concern.

Mr. DORGAN. Thank you very much.

Mr. THOMPSON. I guess I would agree with that a hundred percent. That is, there is basically a licensing requirement for grain going up but no licensing requirement for grain coming down. It all goes back to the subsidies.

Mr. VIVATSON. Mr. Chairman, in concluding, I guess I would just like to say one last thing. Whether it be GATT, the budget negotiations, free trade or whatever pertains to American agriculture, and I as an American producer, it appears the answer is that we have to take less.

Now, agriculture is already in the position where we cannot afford to take less, and I guess I would emphasize that. and I am very, very cautious when it comes to GATT and these things. There only appears to be one loser and that is the producer.

Chairman GIBBONS. Tim?

Mr. JOHNSON. Just very briefly, because I know we are trying to move along here.

But I do have a question about the circumvention of sugar quotas, which is a subject of some concern to me. Obviously, as you know, South Dakota is not a sugarbeet producer to a large scale, but corn sweetener is a very major concern of ours.

I wonder if you would put into perspective. There is some suggestion that there could be 250,000 to 300,000 tons of sugar circumventing the quota. I am not familiar enough with the sugar industry to know what portion of the total domestic consumption in this country. Is that a significant portion or is that one of those things where it is aggravation in principal but it really is not substantially affecting our market?

Mr. VIVATSON. Well, Congressman Johnson, it is significant. The consumption with corn sweeteners and sugar we import and grow is right in the vicinity of 15 million tons. Put a pencil to that, you come out with the proper answer.

What is more significant to that number is that our quota has shrunk to 750,000 tons, and that is sugar that is circumventing the quotas is coming basically out of the hides of the Caribbeans and the Philippines and as Mr. Chairman said, they cannot afford it, and we as sugar growers are well aware of that, and it is a foreign policy issue that the sugar industry has and will answer. It has been strapped on our back.

I guess that is the best way to compare it.

Mr. JOHNSON. Thank you.

Chairman **Gibbons**. I am going to turn Ann loose for a couple of seconds here, so that you all can ask her some questions and she can perhaps ask you some, then we go right to the Governor.

Governor, if you would not mind, your constituents and this panel have been sitting for a little over 2 hours. We will be able to pay closer attention to what you have to say if you will let us take about a 1-minute standup stretch.

Ms. **Veneman**. I think there may be some misunderstanding as to what the provision pertaining to sugar in this agreement really does and what it is, what it says.

Basically, it says that the United States will not introduce or maintain any quantitative import restriction or import fee on any good originating in Canada containing 10 percent or less sugar by dry weight for purposes of controlling the sugar content of that good.

We currently have the ability to control sugar coming into this country in two ways for purposes of protecting our sugar program, as you know. We can control it under section 22 on sugar-containing product, and under what is called the Head Note Authority for Sugar.

What this provision says is that we will not, we promise we will not put quotas on any sugar-containing product for purposes of controlling the sugar content only that contains 10 percent or less sugar.

Now, all of the—it does not affect in any way our ability to continue to use quotas on straight sugar coming in here, on any other sugar-containing product, and, in fact, all of the studies by the ITC and so forth show that for purposes of controlling sugar content, you would probably never put a quota on a product containing 10 percent or less sugar.

So, basically, it is an assurance that we will not do what probably would never be done anyway, and that is put a quota on something containing 10 percent or less sugar.

Now, there was a statement made in the testimony that what that provision does is it allows duty-free access for products containing 10 percent or less sugar. As you know, all duties, except countervailing duties, all tariffs will be eliminated under this agreement. So that basically, the 10 percent provision has nothing whatsoever to do with duty. It simply says that we will not restrict sugar-containing products for purposes of controlling sugar content that contain 10 percent or less sugar.

Does that assist you, I hope, in understanding the provision?

Mr. **Vivatson**. Well, it may assist you, but it does not do much for us sugar growers. I do not mean that resentfully at all. If you take that 1.5 million pounds and apply it just on a tonnage basis, that is 75,000 tons of sugar that you are going to be bringing in.

Another question becomes that we do not allow sugar in this country from Communist countries. Now, are you going to control that, ma'am?

Ms. **Veneman**. But that is unaffected by this agreement. We still do not allow them to—this agreement does not affect whatsoever the ability or nonability to bring in the restricted sugar. That is a Customs issue. It is being worked out with Canada. It will not affect those restrictions at all.

That is a totally separate issue on the fact that we do not allow sugar to come in from Cuba and so forth.

We do not still allow to the extent practical, we can practically enforce it, but we are not waiving that.

We do not waive that at all. All this says is that we will not restrict products for purposes of controlling sugar content containing less than 10 percent sugar.

Mr. VIVATSON. Well, what we stipulate with this thing, we may move industry up there to prepare products that contain 10 percent or less sugar, and in place of 1.5 billion pounds, and this is my speculation and this has to be my position, because we have to look down the road, we could double or triple that amount of sugar-containing products into this country. Not only are we exporting our sugar business, we will be exporting jobs.

Ms. VENEMAN. No, I do not think so. We do not control sugar-containing products across the board now anyway.

Mr. VIVATSON. That, we have registered a complaint. That is a problem. That is where the circumvention of this 250,000 to 300,000 ton. It could be.

Ms. VENEMAN. We have not—we still have the ability to control sugar-containing product, and we can still put quotas on sugar-containing product for purposes of protecting our sugar price support program.

Mr. VIVATSON. And I would emphasis one point. We have the ability and we have not done it.

Ms. VENEMAN. And that is an argument you should make, but it is not—our ability to use that is not limited from a practical standpoint at all because we would under almost no circumstances control the sugar-containing products for those containing less than 10 percent anyway.

Mr. VIVATSON. Well, I guess that is the neat thing about these hearings. We do not have to agree.

Chairman GIBBONS. Well, we did agree that we all needed about a 1-minute standup period. Let us do it now and then we will go right straight to the Governor.

[Recess.]

Chairman GIBBONS. Governor Sinner.

STATEMENT OF HON. GEORGE A. SINNER, GOVERNOR OF NORTH DAKOTA

Governor SINNER. Welcome to sunny North Dakota.

We want to treat you right, so we are going to show you a little northern weather, it looks like.

At the outset, it is important to point out that, immediately after taking office in 1985, I began discussions with my counterparts in Saskatchewan and Manitoba. I met with Premier Pawley and signed an agreement creating a Manitoba-North Dakota Coordinating Commission in August of that year and, that same month, met with Premier Devine and the members of the Saskatchewan-North Dakota Boundary Advisory Committee. During those meetings, many issues of mutual concern were discussed, and many of those issues were resolved or are continuing to be worked on.

I have led and am continuing to lead efforts to secure regional airline service to this region, both United States and Canadian cities included. Other major efforts with Canada have included helping to secure funding for the building of the Rafferty-Alameda Dams, working with Manitoba and Minnesota to ensure that no radioactive waste sites are built on our mutual borders, and a significant effort is underway to designate and to develop Route 85 from Canada to Mexico as the Can-Am Highway.

Other areas of cooperation relate to hunting and fishing seasons, Customs office coordination, tourism, water-related issues and more.

I, in fact, did not oppose the ban on Canadian hogs, but other Governors of surrounding States did so, due to potential chloramphenicol contamination. I chose, rather, to work with Canadian Provinces to restore quarantine, to resolve quarantine problems, although they are not yet resolved.

We have worked hard to end misunderstandings over water projects. I also cochaired with Premier Devine the Canada-United States Task Force of the National Governors' Association, which has been kept up-to-date on the progress on the free trade agreement from the beginning of the negotiations until now.

And, quite frankly, Mr. Chairman, like I think all other Americans, I favor trade between Canada and the United States Trade that is open, free and fair. Nevertheless, I also know that there are fundamental issues which continue to divide us. Issues which, if left unresolved, will continue to undermine free trade and exacerbate problems between the two countries.

Signing an agreement which does not address those issues will, in my mind, provide a false sense of security and will put off a fundamental agreement on other issues not resolved. I fear, in fact, that the long-term good relationship with Canada will be harmed by masking major fundamental problems between these nations. Trade, in fact, may be damaged in the long run.

I began discussing those issues openly with the premiers, other Canadian people, fellow Governors and Federal officials, long before the free trade negotiations began and, yet, virtually all of these fundamental issues are unaddressed by the trade agreement.

The U.S. Trade Office, I must say, has been open and very forthright throughout the discussions. Bill Merkin and Peter Murphy have been superb to work with and I want to compliment them publicly for the openness and cooperation in trying to get the issues on the table. That they failed is the tragedy.

Specifically, relative to the free trade agreement, if you like Federal deficits, Federal trade deficits, you will love this trade agreement. The President, in his announcement speech, made the following statement, he said:

> As the agreement goes into effect, Canada's access to our large domestic markets will grow and Canadian industrial centers will gain opportunity to develop even more important roles in the economy of North America.

If you like having the producers competing with foreign governments, you should also love the free trade agreement, and let me tell you why. Let us just look at a couple of fundamental issues that have been completely ignored. The exchange rate differential.

This is a key issue for any producer economy and it has completely been ignored.

Where American producers compete directly with Canadian producers, such as in livestock, grains and other agricultural products, and in oil, gas, coal and electrical power, Canadians have been at a clear advantage because of the exchange rate relationship which changed dramatically after 1980. They will continue to dump their products into the United States and I have contended from the beginning that to ignore this fundamental issue is to really ignore the fundamental development that is needed for free trade.

I have proposed that the exchange rate disparity be corrected before negotiations on the agreement began. In fact, I proposed that a plan be developed to unify the values of the two currencies over a 10-year period. The bottom line is this, currency values can easily be skewed by either government and have been. Price relationships can be altered overnight.

How can free trade really exist against that backdrop? But this issue again remains totally unaddressed.

I might point out parenthetically that it is not just the Canadians, that we have probably been the worst offender with our completely irresponsible fiscal policies that have put this country in debt to a point that is widely known and that has completely messed up our trade relationship and exchange rates with other countries.

But Canada is no better. Their national debt is something like, I think, one and a half times the U.S. relationship to the GNP, but the bottom line is this, either country can overnight skew the value of the currency by monetary policy and unless that is addressed, I cannot conceive of a relationship that is going to be stable and secure in the future.

Second, marketing practices. Canadians market many of their commodities, hog, wheat and others, through central marketing boards, which market in such large quantities through quasi-government agencies that they can control prices to a much greater extent than can single U.S. commodity producers.

They can and do engage in predatory pricing, as a result. The U.S. wheat export trade education committee has characterized the Canadian Wheat Board, for example, as "the sole exporter of Canadian wheat which enjoys the advantage inherent in any monopoly. The board offers lower than posted prices on its sales to certain key markets where it wants to initiate new business or increase market share. It is able to subsidize export prices through revenues generated under the Canadian two-price system under which the domestic price of wheat is maintained at an artificially high level—about U.S. $5 per bushel at present."

The United States has no analogous structure and no intent to create one, but the free trade agreement does not address these practices. As a result of these marketing practices, the United States has been forced to hold about two-thirds of the world food reserves while Canada has held virtually none. That is the historic problem that has gone on all these years. Canada has repeatedly marketed their wheat at the U.S. price minus a nickel or dime. We end up holding currently about two-thirds of the world food reserve.

Third, environmental requirements. Although provinces contend that they have equal or better environmental standards, the fact is that uniform enforcement in Canada is not in place and the environmental degradation measurements are performed very differently than in the United States.

Reclamation and emissions control requirements are less stringent than those in the United States and the Federal Government in Canada does not have the same kind of oversight the U.S. Federal Government has. As one example, the Canadians have no scrubbers. The Canadians have no scrubbers at all in any of their powerplants, not one.

Fourth, Government ownership and subsidies. Government ownership of products in the means of production is pervasive in Canada. It results in freedom from taxation, lower costs of capital, lack of need to make a profit, and direct and indirect subsidies to Government-owned entities.

In the area of energy, for example, about ninety percent of the energy production in Canada is provincially owned and benefits from direct or indirect subsidies, which makes it almost impossible for our electric utilities, both consumer and investor-owned, to compete and, yet, the free trade agreement leaves virtually unaddressed the Government ownership and subsidy issues.

I might point out that in Manitoba, a couple of years ago, one of the major subsidies was removed. Canada—the Manitoba government actually—had a program where the general fund funded Manitoba Hydro for changes in the exchange rate. Any American company would love to have a Government subsidy to correct its losses due to exchange rate variations.

As late as last year, the Winnipeg Free Press cited a general fund appropriation of $65.9 million covering Manitoba Hydro bills, and, yet, our companies and our producers are expected to compete against that kind of competition.

Fifth, liability costs. I have been informed and the committee may want to verify this, that several years ago Canadian Federal courts discontinued enforcing product liability judgments of U.S. courts. Therefore, if that is true, and I have not had time to check that, in spite of the fact that we impose on our producers the highest liability costs in the history of the world, we do not provide similar protection to our own citizens when injured by Canadian products and I suspect that is true of other imports as well.

To the best of my knowledge, this agreement does not address that issue. To leave American producers so handicapped and consumers so vulnerable is patently unfair.

There are certain commodities, and I use the word broadly, which deserve specific mention because of their major concern to North Dakota. In energy, I have mentioned this issue often. Let me reiterate that almost all Canadian electricity is governmentally owned, highly subsidized, subject to less stringent environmental regulations, and sold to U.S. utilities on the basis of avoided costs.

We have had routine marketing of Canadian power at eighty percent of displaced cost, regardless of what it can be purchased for in the United States. Canadians will sell it for 80 percent of that.

Furthermore, at the annual Interstate Oil Compact Commission meeting, which I chair, many industries, representatives and Governors, such Governors as Governor Carruthers of New Mexico and Governor Bellman of Oklahoma, said they have substantial concerns about the effects of the agreement on oil and gas industries, due to its failure to address those issues similar to those involving the electricity issue.

The energy issue is a national defense and economics security issue. Canadian reductions in power to New England states during that cold spell this winter are an illustration of the danger of reliance on power owned by a foreign nation. When the chips are down, Canadian people will be served, our people will be left without, as we saw recently.

You have heard from the wheat growers. I will not comment further on that, except to say that it is universally agreed that rising imports from Canada are the result of both the central marketing problem and the subsidy on shipping, which is sustained at least to the eastern outlets.

You have been through the sugar issue. I concur with the statements made by the producers that were just here. That is a frightening prospect, and unless there has been some improvement in that language that I am not aware of, I think it poses grave dangers.

The potato industry, the National Potato Council has termed the agreement disappointing and has said that Canada should have been forced to face up to the nontariff barriers and questions concerning the present container law and bulk shipments.

You have heard from the barley producers. I do want to read briefly from a recent letter to this committee from the corn growers. The corn growers have made a very, very strong statement, and I think it is important to read for the public the statements of Mike Hall and Keith Hora.

It says,

> The Canadian Government has imposed a thirty-nine cent per bushel countervailing duty on U.S. corn exports to Canada. Behind that wall of unjustified protection, Canada harvested a record corn crop and is now a minor net exporter of corn, which is in competition with U.S. corn growers.
>
> Although a temporary suspension, the U.S. Department of Commerce ruled that Canadian potash exports to the United States were being dumped and imposed a substantial dumping margin on such imports. While the U.S. produces only about 15 percent of its annual consumption of potash, Canada has been the largest supplier of potash to the United States, an essential fertilizer for maximizing U.S. corn yields breaker.
>
> The proposed free trade zone agreement with Canada should well prove to be as troublesome as the Caribbean Basin Initiative is, much as there are little, if any, safeguards against the transshipment of non-Canadian products, such as alcohol, fuel, sugars, sweeteners, etc., by Canada into the U.S.

My point here, Mr. Chairman, is that almost all the commodity groups have found the agreement threatening to their production and to U.S. marketing. You add to this mix the exchange rate disparity, the significantly larger U.S. market and the other issues already discussed, and it would appear that there is little in the free trade agreement to recommend it to a nation whose producer economy is just beginning to recover.

Throughout the negotiations on the free trade agreement, the U.S. Trade Representative took the position that Canadian Provinces would have to agree to the free trade agreement before it could be considered adopted because provincial premiere authority is far greater than is that of the U.S. Governors, and premieres would have to implement some of its provisions.

I am informed that at least three premieres oppose and will not agree to the free trade agreement. For the most part, these premieres see what I see, a whole host of threatening problems painted over with a very broad brush and inevitably threatening United States-Canada friendship and commerce.

If there were at a minimum a provision in the agreement that would cause it to self-destruct at a time certain, if concerns such as these have not been taken care of, I might be able to support it and, in fact, would be happy to support it, but without such a provision, it is clearly not an agreement beneficial to these two great nations.

The point of all this again is we all favor free and fair trade with Canada, but the serious questions about this agreement that I have cited must make every thinking person wonder, will this agreement cause ultimate harm to United States-Canada relations and will it wreak havoc on large parts of the U.S. production sector.

Finally, Mr. President, a number of years ago, one of the Harvard people, and I am not sure of the man's name, made this comment, which I think is germane here. "If the U.S. Government doesn't protect our own free enterprise system, other nations of the world will certainly destroy it."

I think we see a good deal of that threat here, from the vast provincial ownership of industries and businesses up there to the centralized marketing, heavily subsidized explicit and implicit subsidies throughout the system, and for a production sector economy, the threat is to a country that is just now beginning to recover is very, very serious.

Thank you for your time.

[Statement of Governor Sinner follows:]

Statement of Gov. George A. Sinner of North Dakota

Canada-U.S. Free Trade Agreement.

At the outset, it is important to point out that, immediately after taking office in 1985, I began discussions with my counterparts in Saskatchewan and Manitoba. I met with Premier Pawley and signed an agreement creating a Manitoba-North Dakota Coordinating Commission in August of that year and, that same month, met with Premier Devine and the members of the Saskatchewan-North Dakota Boundary Advisory Committee. During those meetings, many issues of mutual concern were discussed, and many of those issues were resolved, or substantial efforts were begun to resolve them.

I have led and am continuing to lead efforts to secure regional airline serve to the U.S. and Canadian cities in the Midwest. Other major efforts with Canada have included helping to secure funding for the building of the Rafferty and Alameda Dams; working with Manitoba and Minnesota to insure that no radioactive waste sites were built on our mutual borders; and a significant effort is underway to designate and develop Route 85 from Canada to Mexico as the Can-Am Highway. Other areas of cooperation relate to hunting and fishing seasons, customs office coordination, tourism, water-related issues and more.

I did not impose a ban on Canadian hogs when other governors of surrounding states did so due to potential chloramphenicol contamination. We have worked hard to end misunderstandings over water projects.

I also co-chaired, with Premier Devine, the Canada-U.S. Task Force of the National Governors Association which has been kept up to date on the progress of the Free Trade Agreement from the beginning of negotiations to now. And I favor trade between Canada and the U.S., that is open, free and fair.

Nevertheless, I also know that there are fundamental issues which continue to divide us, issues which, if left unresolved, will undermine free trade and exacerbate problems between the two countries. Signing an agreement which does not address those issues will provide a false sense of security and will put off a meaningful agreement on other issues not addressed.

I began discussing those issues openly with the Premiers, other Canadian people, fellow governors and federal officials long before the Free Trade negotiations began. Yet, virtually all of those issues have been left unaddressed or have been addressed contrary to U.S. interests in the Free Trade Agreement.

Specifically, relative to the Free Trade Agreement. . .if you like the federal deficit and if you like the trade deficit, you will love this Free Trade Agreement. If you like having our producers competing with foreign governments, you'll love the Free Trade Agreement. Let me tell you why:

1. The exchange-rate differential-- This is a key issue for any producer economy, and it has not been addressed. Where North Dakota producers compete directly with Canadian producers -- such as in livestock, grains, and other agricultural products; and in oil, gas, coal and electrical power -- Canadians have had a clear advantage because of the exchange rate relationship. They will continue to dump their products into the U.S. I had proposed that the exchange rate disparity be corrected before negotiations on the Agreement began. In fact, I proposed that a plan be developed to unify the values of the two currencies over a ten year period. The bottom line is this: currency values can easily be skewed -- and have been -- price relationships can be altered over night. How can free trade really exist against that back drop? But this issue remains totally unaddressed.

2. Marketing practices-- Canadians market many of their commodities -- hogs, wheat and others -- through central marketing boards which market in such large quantities through quasi-government agencies that they can control prices to a much greater extent than can single U.S. commodity producers, and they can and do engage in predatory pricing practices as a result. The U.S. Wheat Export Trade Education Committee has characterized the Canadian Wheat Board, for example, as ". . .the sole exporter of Canadian wheat (which) enjoys the advantage inherent in any monopoly. The Board often offers lower than posted prices on its sales to certain key markets where it wants to initiate new business or increase market share. It is able to subsidize export prices through revenues generated from the Canadian 'two-price' system, under which the domestic price of wheat is maintained at artificially high levels -- about U.S. $5 per bushel at present." The U.S. has no analogous structures and no intent to create them, but the FTA does not address these practices. As a result of these marketing practices, the U.S. has been forced to hold about two-thirds of world food reserves while Canada holds almost none.

3. Environmental requirements-- Although Provinces contend that they have equal or better environmental standards, the fact is that enforcement in Canada is not uniform, and environmental degradation measurements are performed very differently than in the U.S. Reclamation and emissions control requirements are less stringent than those in the United States, and the federal government in Canada does not have the same kind of oversight the U.S. federal government has. As one example, the Canadians have no scrubbers at all on any of their power plants -- not one.

4. Government ownership and subsidies-- Government ownership of products and the means of production is pervasive. It results in freedom from taxation, lower costs of capital, lack of need to make a profit and direct and indirect subsidies to government-owned entities. In the area of energy, for example, about ninety percent of energy production in Canada is Provincially-owned and benefits from direct and indirect subsidies, which makes it almost impossible for our electric utilities to compete. Yet the FTA leaves virtually unaddressed the government ownership and subsidy issue.

5. Liability costs-- I have been informed -- and the committee may want to verify -- that several years ago, Canadian federal courts discontinued enforcing product liability judgements of U.S. courts. If that is true, in spite of the fact that we impose upon our producers the highest liability costs in the history of the world, we do not provide similar protection to our own citizens when injured by Canadian products. This agreement does not address this issue either. To leave American producers so handicapped and consumers so vulnerable is patently unfair.

There are certain commodities -- and I use the word broadly -- which deserve specific mention because they are of major concern to North Dakotans:

1. Energy-- I have mentioned this issue often. Let me reiterate that almost all Canadian energy is government owned; highly subsidized; subject to less stringent environmental regulation and sold to U.S. utilities on the basis of avoided cost, regardless of the cost of production. Furthermore, at the annual Interstate Oil Compact Commission meeting, many industry representatives and such governors as Governor Carruthers of New Mexico and Governor Bellmon of Oklahoma said that they have substantial concerns about the effect of the Agreement on the oil and gas industry due to its failure to address issues similar to those involved with the electricity industry. The energy issue is a national defense and economic security issue. Canadian reductions in power to the New England states during the cold spell this winter are an illustration of the danger of reliance on power owned by a foreign nation. When the chips are down, our people get left out.

2. Wheat-- Again, to summarize...The National Association of Wheat Growers has said that transportation rate subsidies (Crow Rates) for most Canadian wheat shipped to the U.S. will remain in effect under the Agreement; it will be many years before Canadian import licenses on U.S. wheat will be done away with . . . if at all. As noted earlier, Canadian wheat is marketed by a monopolistic central board, and their domestic wheat prices are maintained through a "two-price" system. Even before the Agreement has been implemented, durum exports to the U.S. have been skyrocketing. These exports have already cost North Dakota durum growers at least $4 million this year alone.

3. Sugar beets-- The Agreement "excludes from preclusion" -- i.e., does not allow the U.S. to preclude -- products that contain 10% or less sugar. Imports of such products from Canada continue to increase, and the U.S. Sugar Beet Association has called such concoctions as "sugar/dextrose mixtures" products which are "contrived" to avoid U.S. import market stabilization laws. As a result, Canada is given license to be a conduit for dumped world sugar because Canada imports most of its own sugar as well.

4. Potatoes-- The National Potato Council has termed the Agreement "disappointing" and has said that Canada should have been forced to face up to non-tariff barriers and questions concerning the present container law and bulk shipments.

5. Barley-- Canada produces more barley than the U.S. and is constantly seeking new markets. U.S. barley producers have little to gain and could lose a great deal due to increased competition from Canadian producers. Barley is under the control of the Canadian Wheat Board, and the problems with that have already been noted. U.S. beer is restricted from Canadian markets, but Canadian beer gains entry to U.S. markets.

Add to this mix the exchange-rate disparity, the significantly larger U.S. market and the other issues already discussed, and it would appear that there is little in this FTA to recommend it to a nation whose producer economy is just beginning to recover.

Throughout negotiations on the FTA, the U.S. Trade Representative took the position that Canadian Provinces would have to agree to the FTA before it would be considered adopted because Provincial Premier authority is far broader than that of U.S. Governors, and Premiers would have to implement some of its provisions. I am informed that at least three Premiers oppose and will not agree to the FTA. For the most part, these Premiers see what I see -- a whole host of threatening problems painted over with a very broad brush and inevitably threatening U.S.-Canada friendship and commerce.

If there were, at a minimum, a provision in the Agreement that would cause it to self-destruct at a time-certain if concerns such as these have not been taken care of, I might be able to support it, but without such a provision, it is clearly not an agreement beneficial to these two great nations.

The point of all this, again, is . . . we all favor free and fair trade with Canada, but the serious questions about this agreement that I have cited must make every thinking person wonder: "Will this agreement cause ultimate harm to U.S.-Canada relations. . . and will it wreak havoc on large parts of the U.S. production sector."

Thank you, Mr. Chairman,

Chairman GIBBONS. Thank you, sir.

First, I want to commend you for your very effective work in transborder relationships. It serves as a model not only to your fellow Governors, but to all of our country as to what could be done when people of goodwill sit down and try to work out mutually irritating problems, and I know of some of the drainage problems and some of the river problems, the runoff problems, the air pollution problems that we have had, and as well as economic problems.

I regret that none of us seem to understand well enough how these currency fluctuations work in order to see what we can do about them. You—as I look at the United States-Canadian dollars and their relationship, apparently the Canadian dollar has been appreciating slightly against the dollar in the last year. Nothing spectacular. I think about 11 percent or something like that, which is not much movement, considering the devaluation we have had versus Japan and versus the European Community.

But I can also remember when the Canadian dollar and United States dollar, I think, one of the first times I ever visited Canada, the United States dollar was less than the Canadian dollar. You got a $1.04 Canadian for every dollar or vice-versa. It was something like that.

Is Canada manipulating its dollar now?

Governor SINNER. I do not think the jury is in on that. There are many people who think they have skewed it. Peter and his staff and their review indicate that they believe that the currency has reached a level based on market forces, and I do not pretend to be a judge of that.

My point is this, that if you look back as late as 1978 and 1979, we were almost on par with these currencies. It shifted very dramatically for reasons that are unclear to me and my point is this, we have the capability, both sides have the capability to just overnight change it 3 or 4 percent, and when you do that, you change the market value of your product.

Anyone that doubts the effect of the exchange rate should look at what happened to Korea and Taiwan's share of the United States market when the Yen went up. Their share in the United States market changed almost instantly, and was a clear dramatic demonstration of the effect of currency relationships on marketing.

I know that the people in the trading business like the volatile changes in the stability of companies. They like the volatile markets, but the people who deal in the commodities, who produce them, cannot live with that kind of instability, and to me, it is a very sad commentary on our ability to govern that we cannot find a way to stabilize these currencies and their relationship.

I personally believe that they should start using a ten-year moving average as the basis for a relationship on tariff against variations off that moving average.

If we do not do that, the currencies of the world are going to continue to be skewed and jacked around.

Chairman GIBBONS. Well, I look at the amount of U.S. dollars being traded every day, and I am sorry I do not have those exact figures in my mind, but they are huge.

The total amount of goods and services that moves across the world borders is something like $2 trillion a year. The total amount of dollar flows is something like $75 trillion a year. Mainly reflecting the movement of financial assets, and I do not know why it is so great. The ratio of 2 as to 75, but it is kind of hard to figure out why it is like that and why it is so big.

I say all that mainly to reinforce the statement that I do not fully understand the situation, and I have not found anybody who can explain it to me, but it is something that we have got to learn to somehow regulate a little better.

There used to be a member of Congress who, at one time, advocated the establishment of a commodity board, such as the Canadian Wheat Board. Do you advocate anything like that?

Governor SINNER. No, and I do not mean to say that there is any proof positive that the Canadian system is wrong. I am simply saying that to pit the free enterprise system in the United States against centralized government marketing in Canada and not address how that plays out on free trade agreement is to ignore an absolutely fundamental question, and to paint it over with very thin paint, I might add.

I do not pass judgment either on government ownership of electrical power. That is not the point. The point is that to not address how that marketing is to be done, how those subsidies are affecting U.S. and free markets, supposedly free markets, is to just beg the question.

That is my concern. The very, very fundamental questions have been ignored.

Chairman GIBBONS. I agree with you. There is a certain danger in depending upon Canadian power. Obviously, unless dependency is well considered and well worked out, when the power gets short, you know who is going to get shorted in the situation.

That seems to be one of the things that keeps us from really developing firm agricultural markets around the world. We are willing to sell our surpluses, but we have never been willing to share our shortages.

I think some day, we are going to have to look at that. It is—we cannot insist all the time that markets be open to our surpluses and not admit that sometimes. I remember the soybeans early in—I happened to be in Japan that day. I would rather have been in Florida for a lot of reasons, but, man, I tell you that was uncomfortable being there. It was worse than walking around Nagasaki on the day of the anniversary of the bomb some 30 or 40 years later, like we did—to be there when we cut off their soybeans and I do not know how—I am not proposing a solution. I do not know one, but some way, we are going to have to guarantee that if we are going to sell our surpluses on a free and open market, we are going to have to share our shortages when and if they ever arise.

Don, you got any comments?

Mr. PEASE. Yes. Mr. Chairman, I would like to thank the Governor for his excellent testimony.

I do not really have any questions, but I would like to especially commend the Governor for raising the question on the exchange rate differential. Like you, sir, I have been concerned about and puzzled by the apparent stability of the United States-Canadian dollar relationship.

Back in the early eighties, when the dollar was soaring, the Canadian dollar did not change a whole lot. The last couple of years, when the dollar has plunged, 50 percent against major currencies, it has not varied much either, and it seems to me that there has to be more there than meets the eye and we need to get to the bottom of that before we finally put the stamp of approval on this arrangement.

Governor **Sinner**. Congressman, I spoke on this issue in Tokyo, when—before the yen went up, a group of us were representing the United States, 5 or 6 Governors were over there, and I proposed to the Japanese that the United States was simply not going to put up with the jacking around of their currency values and the relationship that was going on, however guilty we were for the problem, and that sooner or later, Japan was going to find itself in exactly the same position.

Well, of course, it played out as everyone knew it would. I am convinced that there is a good possibility that a 10-year moving average as a base, corrected by tariff for variations off that base, would work.

You probably would have to go semiannual or maybe quarterly adjustments, but to let this situation go on, where a 4 or 5 percent change in currency and market prices can happen that fast, is mind-boggling.

Most companies—we did a review of the retail business. The average net profit in the retail business in the United States is about 3 percent of gross sales. Now, you can skew that that much overnight by governmental actions, and to ignore that and try to pretend that we can have free trade is, I think, is putting one's head in the sand.

Mr. **Pease**. Thank you, Mr. Chairman.

Mr. **Dorgan**. Thank you, Mr. Chairman.

Governor, you have given us, I think, an excellent statement, and you have described a number of areas in which you have problems with the free trade agreement. The exchange rate, marketing practices, environmental requirements, government ownership and subsidies, liability costs, and other commodity-specific difficulties are all problems.

If you were in a position to do something to renegotiate in a short period to remedy some of the problems what would you do to improve this free trade agreement so that someone like yourself could support it?

Governor **Sinner**. No. 1, I would set up a commission with the clear assignment that within 5 years, a plan would be in place to level the currency values. I cannot believe it is that difficult. It seems to me that if they required each side to move toward an equal value at 20 percent movement each year, that, in 5 years, they would be there.

Frankly, I think they ultimately are going to have to go to some adjustment by tariff. I think that is the only way it is going to be worked, unless they go back to the gold standard, which I do not think anybody wants to do.

Mr. **Dorgan**. May I ask a question about the currency value issue?

That exists whether or not we have a free trade agreement. That issue still exists, does it not, outside of the free trade agreement?

Governor **Sinner**. Yes, it does, but it is exacerbated by the fact that you are now trying to remove some of the other barriers and some of the other nontariff barriers. Up until now, Canada has had a whole host of responses, so have we, in some areas of skewing markets.

If that is removed, the currency issue really becomes a very, very important function.

Second, I think that unless there is an understanding that centralized marketing competition and government ownership be clearly understood and the effect on American free marketing and enterprise and entrepreneurial marketing, unless that is resolved to the satisfaction of Congress, this thing should self-destruct in 3 years, and I would force the administration to come to an understanding that the agreement would automatically self-destruct unless those issues were resolved.

You can see the effect on the wheat that has been mentioned already. Durum imports are rising at an alarming rate. The sugar issue, I think that the point that was made of U.S. producer or U.S. processors moving across into Canada is very real under the scenario that was painted here.

I am not at all convinced that they can distinguish between which products are Canadian origin and which are not, and that there will not, in fact, be a lot of dumped world sugar coming through the Canadian border under this agreement.

But, nonetheless, I think that unless there is an understanding in the congressional authorization that these major fundamental issues of subsidy, governmental ownership, and exchange rate are resolved in a time certain, the thing should self-destruct.

Mr. **Dorgan**. All right. It is a long and tortured trail that we have trekked to try and understand fully what this agreement would mean and what it would do to both countries and, more specifically, what it would do to producer groups. I think you have contributed to that understanding today. We have met in Washington in my office with Bill Merkin and Ann Venneman, previously and had some discussion on some of these.

But I appreciate, Governor, your willingness to come and share what I think is a very well-prepared statement to the Ways and Means Committee. We appreciate that very much.

Thank you.

Chairman **Gibbons**. Tim.

Mr. **Johnson**. Well, I just want to commend Governor Sinner as well for an excellent statement. I noticed from the Forum that this has been an issue of some attention recently with Governor Perpich as well.

But I share some of your concerns that we have been looking at winners and losers in this kind of proposal, that winners may tend to be in the financial community as opposed to the producers of agricultural product that has an enormous impact on us and our region of the country, and that as well that access to markets may not be the key issue for those of us in the agricultural community in any event so much as it is securing a reasonable decent price for the product that we grow and we create.

Some of the issues you raised, I am not sure what the answers are, would be in terms of monetary policy, but I think your statement is certainly beneficial to the committee, the Ways and Means Committee, to the Agriculture Committee as well, and I appreciate your insights on this.

Governor **Sinner**. Mr. Chairman, I presented the exchange rate issue at Harvard, to the Law School and School of Economics, about a year ago, and they reproduced it, and I will send the committee a copy of that for your understanding. It is not at all intended to be a spunout concept in detail, but conceptually, I think, it has a lot of merit.

Chairman **Gibbons**. I would like to have your efforts in that area, in that regard. A very important area that we need to pay more attention to.

Governor **Sinner**. Thank you very much.

Chairman **Gibbons**. You have done a good job in explaining your position, Governor, and you have obviously done an excellent job in United States-Canadian relationships, and we appreciate that.

So, good luck.

Governor **Sinner**. Thank you very much.

Mr. **Dorgan**. Thank you, Governor.

Chairman **Gibbons**. Next, we have Representative Orlin Hanson, who is from Sherwood, ND.

I appreciate your coming. I feel a very close kinship to you. I served on the Finance and Taxation Committee for 10 years, 10 too many, in the Florida Legislature. It was rough. So, I know what kind of problems you have got.

STATEMENT OF HON. ORLIN M. HANSON, STATE HOUSE OF REPRESENTATIVES, NORTH DAKOTA

Mr. **Hanson**. Thank you, Mr. Chairman.

My name is Orlin Hanson. I am a rancher in northwestern North Dakota and a State representative. My hometown is Sherwood. It is a regional shopping center for Canadians, located 2 miles south of the border.

I represent no one here but myself today. I have no special interests involved in this testimony, and as I sat here this morning, I have asked myself, I wonder what are you doing here, Bill. I have been accused of working for the Canadians, and I wish somebody was paying my expenses to this inn, to this hotel tonight, to my trip down here and the time I have spent.

I spent a lot of time reading this free trade agreement, studied it, been in contact with a lot of offices in Washington and Canada trying to fully understand the implications of it.

As to why I am here, I guess I learned early in life as a young cowboy in North Dakota and the Canadian border that you cannot always ride the easy ones. Someone has got to ride the rough string a little bit ahead of time if you are going to get the job done. So, I decided I would come here today, Mr. Gibbons, at your invitation to testify, and I guess maybe present just a little bit different viewpoint.

I do not want to contradict anything that anybody has said before me because most all of it is true. Granted, they did paint the worst case scenario, and it is possible that could happen, it can happen in this world of ours.

But, anyway, with that in mind, I want to take this opportunity to thank you and your committee for this kind invitation to appear before you today and testify in such an important issue as the free trade agreement with Canada.

You are to be commended for bringing this hearing to Fargo, ND, and so far from Washington, DC. By so doing, you have given a lot of us a chance to testify and express our thoughts on this subject.

I want to thank you, Congressman Dorgan, especially for your efforts at bringing this subcommittee to our State. You are doing a tremendous job down here. I honestly believe that the work you are doing on that swamp buster bill, that bill will have a more disastrous effect on the farmers in the State of North Dakota than this free trade agreement. So, keep up the good work down there on that.

Free trade with anyone conjures up visions of disaster in most anyone but more especially if it is with foreign countries. It seems as though people think of foreigners as someone out to get the best of you or take advantage of a situation.

Believe me, Mr. Chairman, I have lived and worked and played with our neighbors to the north all my life, and they are no different than you and I. You see, I was born and raised on a cattle ranch that straddles that Canadian border and still operate the home place. Someone always asks me, how close do I live to the border, I always tell them, when I go up to the water hole in the corner in the winter time for the cattle, if I park my pickup on the north end of the water hole, it sits in Canada.

I can faintly remember the days when free trade meant just that. Shortly after World War II, my dad bought a grain swather in Carnduff, just 12 miles north of the border. The only way it could be brought across the border was for them to set it on the border and we accidentally pick it up. Arrangements were made to do this and then, just the day before we were to take delivery, the import duties were lifted on agricultural machinery and what a feeling it was.

I was quite proud that day as I drove the tractor across the line at the U.S. Customs with the swather behind me legally. You see, I have lived all my life with a half trade circle, a wall at my back, and with practically no doors to get through it, I can only go south. I was born in the thirties, the year of the famous Smoot-Hawley Tariff Act. This is the law we have been living under and trying to change ever since.

It was passed during the depression in an effort to help some of our national enterprises survive, but those kind of measures very seldom help in the long run and it is doubtful that they can help at all. As you add tariffs or subsidies to any product to make them more competitive, whether it be a local or international, the competition has raised their level of subsidizations or lose out in the marketplace.

In other words, it becomes a trade war, as you well know, and only the buyer is the winner. We have done a good job of selling our wheat through the export enhancement program these past 2 or 3 years, but it has been at the expense of our friends around the world and the American taxpayer.

The real big beneficiaries have been the Communist bloc countries who have been able to buy our wheat at far below the cost of production either here or in their countries, thereby being able to use those funds for something probably not to our best interests.

The one big plus I see for this enhancement program, that it has brought our trading partners in the world to make them more willing to talk about agriculture and the GATT talks going on in Uruguay. As you all know, this is the one segment of our economy that has never been on the table for discussions and the level of subsidies all over the world has gotten out of hand.

Chairman Gibbons and members of this committee, the first thing that needs to be considered as we discuss this agreement is what is the alternative to it? What is going to happen if it is not implemented? This is the question that is so hard for the average person to comprehend or understand.

Most of them figure that everything will meet status quo, but you and I know that is not the way it works. Unless there is a mechanism to monitor all aspects of trade between countries, it becomes so fragmented that trade wars are the result. Our recent fight with Canada over potash and cedar shingles is a good example of what happens unless there is some way of keeping track of these issues and settling them through negotiations before we get to the fighting stage.

Premier Grant Devine of Saskatchewan likes to put it this way: either talk or fight; and he always says I am not much of a fighter, so let us talk.

The GATT agreement was supposed to do this, but too many countries are not willing to put all issues on the table. So, those negotiations become distorted, too. The Governor, you have heard some of the special interest groups here today, one in particular, the North Dakota Durum growers, and rightly so. If they do not speak up now loud and clear, they will be lost in the shuffle. Durum is one of the specialty crops we grow here in North Dakota and likewise it is raised primarily across the border in the prairie Provinces.

I do believe this free trade agreement will give us the mechanism to solve problems like this we are in now with Durum coming across the border and no seemingly justifiable way to justify it. You see, in reality, our borders are open right now to free trade and agriculture products, but only one way and that is this way.

Canada is one of the highest tariff countries in the world and that is what I have been battling all my life. The only thing is in agriculture equipment. There is really nothing to stop them from flooding our market now with the Durum and we have heard testimony here this morning basically of what is taking place right now.

Without invoking section 22 or the Canadian Wheat Board refusing to give importers a permit to export it from Canada, last year, it was our corn going north that caused a squabble and this year it is their Durum coming south, and I could go on and on. We have been on this slippery hill now sliding downhill.

What is next? You take your pick because I am getting a little fed up with all the bickering and think there is a better way and that is this free trade.

The Governor alluded to something we have tried here in North Dakota and that is the North Dakota-Saskatchewan Boundary Commission. It was a statutory committee put in place in 1983 by the North Dakota Legislature and Saskatchewan Legislative Assembly to work—try and work out problems and irritants before they became full-scale fights.

Governor Sinner and Premier Devine act as chairmen of this committee, and we have accomplished things since its inception that were impossible before. A truck reciprocity agreement was signed last December 10 along with a 20-mile free zone for trucks on either side of the border—a common standard for anhydrous tanks to facilitate their movement.

It might not seem like much, but in local areas it is a lot. We are on the verge of putting into place an international flood control and water management program in the Souris Basin that will be monumental in its accomplishments. These are just a few things we have accomplished through this.

The Blue Tongue is one that has not been mentioned with the cattle industry. They have effectively had this as a nontariff trade barrier on us for years and years, and we cannot go in.

Just recently, Len Biggart, president of the National Cattlemen, announced that they had reached an agreement now where our calves will be able to go north during the vector-free period. He said that this is with the thought that the free trade agreement was going in, was what brought them finally to the bargaining table on this.

We live in a global family. We are not just isolated here in the North American Continent any more, and I think probably one of the greatest benefits to come from this free trade agreement is that if we can get together with the Canadians and work together with them on an international basis, in the round of GATT talks in Uruguay now, and work towards getting agriculture on that table and try to reduce the subsidies around the world and the people who buy our grain would pay for the cost of production, I think is what we have to work for.

It was mentioned today the bi-national dispute panel and that we did not think we would have too much in it. That will be a panel that will be made up of experts selected from a roster that are concerned with the problem that is in there, and what we have to do is make sure that we are a part of that and that we will be able to solve our problems.

I honestly believe this will be one of the truly historical documents to have ever been signed between two countries. We have the opportunity here to show the rest of the world what can be accomplished if two sovereign nations are willing to stretch for the hand in friendship and negotiate in good faith. It is not a perfect document. It is far from it, but it is a step in the right direction. It is one we can build on and work to make this world a better place to live.

I thank you.

[Statement of Mr. Hanson follows:]

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House of Representatives

STATE OF NORTH DAKOTA
BISMARCK 58505

Rep. Orlin "Bill" Hanson
District 3
Route 2, Box 22
Sherwood, ND 58782

Committees
Finance and Taxation
Transportation, Vice Chairman

TESTIMONY TO BE PRESENTED TO THE
U.S. HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE
FRIDAY MARCH 11, 1988, FARGO, NORTH DAKOTA
HONORABLE SAM GIBBONS, (D) FLORIDA PRESIDING

My name is Orlin M. Hanson, a rancher in Northwest North Dakota and a State Representative. My hometown is Sherwood, a regional shopping center for Canadians, located 2 miles south of the border. I represent no one but myself today and have no special interests involved in this testimony.

I want to take this opportunity to thank you and your committee for this kind invitation to appear before you and testify on such an important issue as the Free Trade Agreement (F.T.A.) with Canada. You are to be commended for bringing this hearing to Fargo, North Dakota so far from Washington, D.C. and by so doing giving a lot more of us a chance to appear and express our thoughts on it. I want to thank you, Congressman Dorgan, especially for your efforts in bringing this Subcommittee to our state.

Free trade with anyone conjures up visions of disaster in most any one but more especially if it is with a foreign country. Seems as how most people think of foreigners as someone out to get the best of you or take advantage of the situation. Believe me, Mr. Chairman, I have lived, worked and played with our neighbors to the north all of my life and they are no different than you or I. You see I was born and raised on a cattle ranch that straddles the Canadian Border and still operate the home place. When someone asks how close do I live to the border, I always tell them, when I go up and open the water hole for the cattle in the winter, if I park my pick-up on the north end of the water hole, it sits in Canada. I can faintly remember the days when free trade meant just that. Shortly after W.W.II, my dad bought a grain swather in Carnduff, just twelve miles north of the border. The only way it could be brought across was for them to set it on the border and we pick it up accidently. Arrangements were made to do this and then just a day before we were to take delivery, the import duties were lifted on agriculture machinery and what a feeling it was to be able to bring it through the border legally. I was quite proud that day as I drove the tractor across the line at the U.S. Customs with the swather behind.

I was born in 1930 the year of the famous Smoot-Hawley Tariff Act. This is the law we have been living under and trying to change ever since. It was passed during the depression in an effort to help some of our national enterprises survive but those kind of measures very seldom help in the long run and it is doubtful if they help at all. As you add tariffs or subsidies to any product to make them more competitive, whether it be local or international, the competition has to raise their level of subsidization or lose out in the market place. In other words it becomes a trade war, as you well know, and only the buyer is the winner. We have done a good job of selling our wheat through the Export Enhancement Program (E.E.P.) these past two or three years, but it has been at the expense of our friends around the world and the American taxpayer. The real big beneficiaries have been the Communist Bloc countries who have been able to buy our wheat at far below the cost of production, either here or in their country, thereby being able to use those funds for something probably not to our best interest. The one big plus I see for this enhancement program is that our trading partners in the world seem to be more willing to talk about agriculture in the G.A.T.T. talks going on in Uruguay. As you all know this is the one segment of our economy that has never been on the table for discussion and the level of subsidies all over the world has gotten out of hand.

Chairman Gibbons and members of this committee, the first thing that needs to be considered as we discuss this agreement is, what is the alternative to it? What is going to happen if it is not implemented? This is the question that is so hard for the average person to comprehend or understand. Most of them figure that everything will remain status quo but you and I know that's not the way it works. Unless there is a mechanism to monitor all aspects of trade between countries it becomes so fragmented that trade wars are the result. Our recent fight with Canada over potash and cedar shingles is a good example of what happens unless there is some way of keeping track of these issues and settling them through negotiations before we get to the fighting stage. Premier Grant Devine of Saskatchewan likes to put it this way, "You either talk or fight" and "I'm not much of a fighter so lets talk". The GATT agreement was supposed to do this, but too many countries are not willing to put all the issues on the table so those negotiations become distorted, too.

You've heard from some of the special interest groups here today, one in particular, The N.D. durum growers, and rightly so. If they don't speak up now loud and clear they will be lost in the shuffle. Durum is one of the specialty crops we grow here in N.D. and likewise it is raised primarily across the border in the prairie provinces. I believe this F.T.A. will give us a mechanism to solve problems like we are in now with durum coming across the border and no seemingly accountable way to justify it. You see in reality our borders are open right now to free trade in agriculture products but only one way, and that is this way. There is really nothing to stop them from flooding our market now with this durum without invoking "Sec-22" or the Canadian Wheat Board refuses to give the importers a permit to export it from Canada. Last year it was our corn going north that caused the squabble and this year their durum coming south. What's next? You take your pick cause I'm getting a little fed up with all the bickering and think there is a better way and that is the F.T.A.

We have tried something similar to this agreement here in North Dakota called the North Dakota Saskatchewan Boundary Advisory Committee. It was a statutory committee put in place in 1983 by the North Dakota Legislature and Saskatchewan Legislative Assembly to try and work out problems and irritants before they became full scale fights. Governor Sinner and Premier Devine act as Chairmen of this committee and we have accomplished things since its inception that were impossible before. A truck reciprocity agreement was signed last December 10, along with a twenty mile free zone for trucks on either side of the border. A common standard for Anhydrous tanks to facilitate their movement across the border in the trade business. It might not seem like much but in local areas it is a lot. We are on the verge of putting in place an International Flood Control and Water Management Program in the Souris River Basin that will be monumental in its accomplishments. These are just a few thing we have been able to accomplish in just a short time frame by talking.

I honestly believe this will be one of the truly historical documents to have ever been signed between two countries. We have the opportunity here to show the rest of the world what can be accomplished if two sovereign nations are willing to stretch forth a hand in friendship and negotiate in good faith. It is not a perfect document, far from it, but it is a step in the right direction. It is one we can build on and work to make this world a better place to live in.

Chairman **Gibbons**. Well, I am truly impressed with your statement, sir. I think you have caught the spirit of this. This is not the end-all free trade agreement. This is a freer trade agreement, acknowledging that there are many problems yet to be solved, and I think that, you know, I have had the privilege of serving on the United States-Canadian Parliamentary Delegations for many, many years now, and these problems do grow.

There have been many more problems to talk about every time we meet than we did the first time we met, and that is rather discouraging, and that is one of the reasons why, in this agreement, we have a disputes settlement mechanism. Something to get these problems finally decided and out of the way so that they do not continue to poison the whole environment in which we work and live.

And as you were testifying, I sat here and thought, you know, how much better position we are in to start on an agreement like this than the Europeans when they started on their European Community. We do not propose to go as far as they are going or have gone, and our differences with the Canadians are so much less than the differences between those Europeans.

Not only did they have different style economies, but they have been killing each other just recently prior to that, and, fortunately, that has not gone on in an organized basis between the United States and Canada since 1814, and we have sort of gotten over that childishness.

So, I think that you are on the right track. Perhaps there are some things in this that we can clean up, straighten out. We certainly intend to try to do it, but I really appreciate your coming here and telling it like it is.

Mr. **Hanson**. Thank you, sir.

Chairman **Gibbons**. Don?

Mr. **Pease**. I have just no questions, Mr. Chairman. I do appreciate your testimony.

Chairman **Gibbons**. Yes, sir.

Mr. **Dorgan**. I have no questions, but let me state that your testimony, Bill, was excellent and interesting and a departure from previous testimony this morning. I might add that the committee did attempt to find more persons interested in testifying in favor of the proposal. They were not very successful in that respect, but they attempted to do that. I think it is important for us to have at a hearing of this type all of the perspectives available to us and you provided an important one, and I think you expressed it clearly and very well.

Thank you very much.

Mr. **Hanson**. Thank you, Don.

Chairman **Gibbons**. Tim?

Mr. **Johnson**. Bill, I wanted to commend you on an excellent statement. I think you articulated the position very well, and I have no questions.

Chairman **Gibbons**. Thank you, sir.

Mr. **Hanson**. Thank you, Mr. Chairman. I do feel like the low man on the totem pole.

Chairman **Gibbons**. Oh, well, do not feel that way. I have felt that way for years. As you get older, you will outgrow it. Do not worry.

You know, you talk like you were born in the years of Smoot-Hawley. I can remember when they passed the Smoot-Hawley. In fact, I have got a picture of Mr. Hawley on the wall in the office. I look up every now and then and remember how he thought he was doing the right thing. He was not a malicious person, and he just started off with a little bill that was going to correct a few problems, and the steamroller developed and it got out of his control and everybody else's control. We do not want that to happen here.

All right. Our next witness is a panel of the North Dakota Farm Bureau, Mr. Burke, who is the president. From the North Dakota Farmers Union, Mr. Bergman, the president. From the North Dakota National Farmers Organization, Mr. Shockman, president. More presidents than I have seen in a long time.

All right. We will go in the order in which you were listed on the agenda here. The Farm Bureau first.

Mr. Burke.

STATEMENT OF MONTY BURKE, PRESIDENT, NORTH DAKOTA FARM BUREAU

Mr. **Burke**. The shortness of the cord will cause more togetherness, too.

Mr. Chairman, Congressmen, I do thank you very graciously for the opportunity to appear before you on this important matter.

My name is Monty Burke, and I am a farmer from McKenzie, ND, and I serve as president of the North Dakota Farm Bureau, and I am here today representing that organization.

Farm Bureau is a general farm organization which currently has 23,300 member families in the state, and our purpose as an organization is to provide a unified voice on issues involving agriculture and other concerns of our members, and let me say right here and now that I think we can be very proud of our Governor in the statements he presented in covering what I consider to be the vast majority of the attitude in North Dakota. It was well put and very eloquently presented.

I would like to begin, though, by expressing to you and the members of your committee the feelings of frustration that I have encountered in trying to familiarize myself with the United States-Canada Free Trade Agreement.

After looking at this legislation, at this proposal, there seems to be a wealth of unknowns rather than knowns. Interpretations vary profoundly from individual to the next. One organization from the next and even from country to country.

Because of these varying interpretations, the basic premise of what this agreement was designed to accomplish has become very clouded, and let us remember that it was designed to inspire true free trade between the United States and Canada, and in addressing my concerns with the free trade agreement, my emphasis will be on North Dakota and Canada as trade partners. Specifically, North Dakota agriculture.

But let me point out early on that we are not alone in our concerns. My counterpart, the president of Maine's Farm Bureau, Dan LaPointe, and Kansas president Doyle Rajhes, in most recent days, have been in contact with me wondering what is going on and what we are doing about the United States-Canada Trade Agreement.

I point out that Maine produces fruits, nuts, potatoes, and fresh fruits, and Kansas, of course, is one of the major wheat producing States in the Nation. It is easy to see why so many commodity groups are voicing their concerns with the agreement as it is presently written. From past experience, we in North Dakota have become very cautious when dealing with Federal regulations and the writing of administrative rules. The Swamp Buster, the Endangered Species Act, the commercial drivers license legislation, and the diesel fuel tax, are just a few examples of where regulation problems have arisen for rural people.

These experiences have taught us that if we even have the slightest indication that there is a problem, it is best to voice our concerns before the legislation is passed and it has always been easier to rectify a problem before legislation is passed than it is after it has been passed, and I guess I personally am particularly concerned when eastern news sources imply that the only opposition to the FTA is a few disgruntled wheat farmers in North Dakota.

We are very suspicious of people from government that are here to enlighten us about how something is going to affect us. So, this brings me to the areas of our concern or maybe a better statement might possibly be questions that North Dakota Farm Bureau has with the free trade agreement.

Farm Bureau members would like to know that the free trade agreement is also fair and that has been expressed many times before. The areas—I will get down to some of the areas now that we would like to discuss.

The areas of subsidies is probably one of the most complicated issues in the entire agreement and according to the language in the agreement, formulas have been developed to determine when the United States and Canada subsidies are equaled out.

However, I would like to say that with the unique government programs, each taking different philosophies, who can actually determine what constitutes a subsidy. Loan payments, target prices, and deficiency payments are all subsidies, but how about transportation, set-aside acres, reserved grain, ag extension subsidies, and a whole host of other things that has been mentioned?

This is an area that must be resolved before the agreement is passed into law. Our existing farm programs have made us very, very good neighbors to our friends to the North because they have relied on us to set the tempo.

Tariffs between the two countries in most instances are negligible. Nontariff barriers are more predominant and that has been covered before. These include licensing requirements, and I would point out to you that it was suggested the licensing requirements could be changed in the future. That holds little hope to the struggling farmers in North Dakota in the present time, and I am very cautious about that, and how effective will the trade agreement address each of these barriers.

Another question, and I am very happy that it was covered before, but I want to mention it, another question that needs answering is the subject of currency. Differing currency values from one country to the other can give one an unfair advantage which could lead to a flood of agricultural products into the other country, and I am not pointing fingers just because the balance happens to be tilted against us in this particular instance.

I think it is important to reiterate that a free trade agreement between the United States and Canada must also be a free trade—fair trade agreement. In that, I do not mean an agreement when we look at the fiscal pluses and minuses and if they balance, you can congratulate yourself for making it all look good on paper.

I am talking about an agreement that does not impose substantial harm to one segment of our economy. We have to keep in mind that even the big picture is composed of many important details. When we try to gain a large overall benefit, it is easy to overlook the smaller losses. But enough small losses can quickly lead to a major loss.

And the last point that I would like to make and leave with you is concerns of seemingly at odds objectives of Canada and United States in the free trade agreement. In an executive summary published by Harold Giuther of the University of Illinois, he said,

> That Canada's objectives are to secure access to the U.S. market by limiting the effects of U.S. trade remedy laws and to improve access for Canada products by reducing tariff and nontariff barriers.

He also goes further to say,

> The United States motivation was to promote freer trade worldwide by fostering trade barrier reductions and more open markets, establish precedence for the multilateral trade negotiations being held under the general agreement on trades and tariffs, and by expanding markets for industrial goods, services and investment capital.

And at least that writer did not include agricultural product.

So, it seems to me that we have a conflict in the basic objectives of the whole agreement and until that is remedied, I do not think that we can have truly free or fair trade. In agriculture, both the United States and Canada are net exporters of similar agricultural commodities. Obviously, this leads to extreme competition, especially between North Dakotan and Canadian agricultural products.

Knowing that, it may be difficult but not impossible to come up with mutually agreed upon objectives. We can compete if all things are equal. Instead of cutting each other's throats through competition, maybe it would be better if the two countries would work together as net exporters to other countries.

To me, it makes more sense and is much more profitable if we work as partners rather than as competitors, and if the United States-Canada Free Trade Agreement is passed in its present form, I shudder to think about it, but the United States—the United States and Canada could very well become trade enemies, as has been indicated by previous testimony, and to me, gentlemen of the committee, this would be a very sad day, indeed.

Thank you again, and I would be most willing to attempt to answer any questions that you may have at the appropriate time.

[Statement of Mr. Burke follows:]

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U.S. House Ways and Means
Subcommittee on Trade
Fargo, Field Hearing
U.S. - Canada Free Trade Agreement
March 11, 1988

Mr. Chairman,

My name is Monty Burke and I am a farmer from McKenzie, North Dakota. I am serving as president of North Dakota Farm Bureau and am here today representing that organization. Farm Bureau is a general farm organization that currently has over 23,300 member-families in the state. Our purpose, as an organization, is to provide a unified voice on issues involving agriculture and other concerns of our members.

I would like to begin by expressing to you and the members of your committee the feelings of frustration I have encountered trying to familiarize myself with the U.S. - Canada Free Trade Agreement. After looking at this legislation, there seems to be a wealth of unknowns; interpretations that vary profoundly from one individual to the next, one organization to the next and even one country to the next. Because of these varying interpretations, the basic premise of what this agreement was designed to accomplish has become clouded. And let's remember that it was designed to inspire true free trade between the United States and Canada.

In addressing my concerns with the Free Trade Agreement, my emphasis will be on North Dakota and Canada as trading partners, specifically North Dakota agriculture.

We have a unique situation in North Dakota because we share a 310-mile border with Canada. Within that 310-mile border exists several common

markets for which we must directly compete.
North Dakota's two major industries are agriculture and energy. The products produced in these industries are very similar to our Canadian counterparts. Even though we are friends with the Canadians and travel freely across the border, we find ourselves in direct competition with them in the production and sales of such things as durum, hard red spring wheat, barley and livestock.

It is easy to see why many of our commodity groups are voicing their concerns with the agreement as presently written. And this brings us back to the unknowns I alluded to earlier.

From past experience, we in North Dakota have come to be very cautious when dealing with federal regulations and the writing of administrative rules. Swampbuster, the endangered species act, commercial driver's license legislation and the diesel fuel tax are just a few examples of where regulation problems have arisen for rural people. These experiences have taught us that if we even have the slightest indication there may be a problem, it is best to voice our concerns before the legislation is passed. It is always easier to rectify a problem before legislation is passed than it is to pass the legislation, then try to fix it.

This brings me to our areas of concern -- or maybe a better statement might be possible questions -- that North Dakota Farm Bureau has with the Free Trade Agreement.

Farm Bureau members would like to know that the Free Trade Agreement is a fair trade agreement. In other words, if this agreement is put into effect, we want to know that our Farm Bureau members and North

Dakotans in general, will not bear the brunt of Canadian ag product dumping. If large quantities of Canadian agricultural products make their way into the U.S. market, it will further depress our prices. The U.S. Durum Growers Association says that adverse affects have already been felt due to Canadian dumping. According to the Durum Growers, from the period August 1, 1987, to February 14, 1988, the Canadian Wheat Board sold the United States four million bushels of durum. The entire amount sold to us the year before was only 2.7 million bushels, and there are still several months to go before the end of this fiscal year.

The area of subsidies is probably one of the most complicated issues of the entire agreement. According to language in the agreement, formulas have been developed to determine when United States and Canadian subsidies equal out. However, with two unique government programs, each taking a different philosophy, who can actually determine what constitutes a subsidy? Loan payments, target prices and deficiency payments are all subsidies. But are transportation, set-aside acres, reserve grain and ag extension, subsidies as well? This is an area that must be resolved before the agreement is passed into law.

Tariffs between the two countries in most instances are negligible. Non-tariff barriers are much more predominant. These can include licensing requirements, supply management, health restrictions, labelling requirements, marketing boards, quotas and import standards, to name a few. How effectively will the Free Trade Agreement address each of these barriers?

Another question that needs answering is the subject of currency. Differing currency values from one country to another can give one an unfair trade advantage, which could lead to a flood of agricultural products into the other country.

"End use certificates". I am told that even if subsidies do become equal and grain begins to flow between the two countries, "end use certificates" will be needed before any grain can flow into Canada. Yet, grain coming into the United States will not be slowed or stopped by such barriers. Is this true? If so, it is not free or fair trade in my book.

I also question whether other countries will use the agreement to get around trade restrictions imposed by the U.S. and Canada. The agreement is supposed to have provisions built into it to protect us from anything like this happening. I hope we are sure it cannot happen. Limitations and restrictions were placed on other nations for specific reasons and they need to be adhered to. That means we have to close all possible loopholes.

I think it is important to reiterate that a free trade agreement between the United States and Canada must also be a fair trade agreement. Now, I don't mean the kind of agreement where you look at all the fiscal pluses and minuses and if they balance, you can congratulate yourself for making it all look good on paper. I'm talking about an agreement that does not impose substantial harm to any one segment of our economy. We have to keep in mind that even the big picture is composed of many important details. When we try to gain a large, overall benefit, it is easy to overlook the smaller losses.

But enough small losses can quickly lead to a major loss.

The last point I would like to leave you with concerns the seemingly at-odds objectives of Canada and the United States in the Free Trade Agreement. In an executive summary published by Harold D. Guither of the University of Illinois, he says Canada's objectives are:

> "to secure access to the U.S. market by limiting the effects of U.S. trade remedy laws, and to improve access for Canadian products by reducing tariff and non-tariff barriers."

I was told the United States' motivation was to promote freer trade world-wide by fostering trade barrier reductions and more open markets, establishing precedents for the multi-lateral trade negotiations being held under the General Agreement on Tariffs and Trade, and by expanding markets for industrial goods, services and investment capital.

It seems to me that we have a conflict in the basic objectives of the whole agreement. Until that is remedied, I do not think we can truly have free or fair trade.

In agriculture, both the United State and Canada are net exporters of similar agricultural commodities. Obviously, this leads to extreme competition, especially between North Dakotan and Canadian agricultural products. Knowing that, it may be difficult -- but not impossible -- to come up with mutually agreed upon objectives. Instead of cutting each others' throats through competition, maybe it would be better for the two countries to work together as net exporters to other countries. To me it makes more sense and is much more profitable if we work as partners rather than competitors. And if the U.S. - Canada Free Trade Agreement is passed in its present form, the United States and Canada could become trade enemies. This would be a sad day, indeed.

Respectfully submitted:

Monty Burke
P.O. Box 168
McKenzie, ND 58553
Phone: 673)3140

Chairman **Gibbons**. We appreciate your testimony, Mr. Burke.

We will come back to you when we hear the rest of your colleagues.

Mr. Bergman.

STATEMENT OF ALAN BERGMAN, PRESIDENT, NORTH DAKOTA FARMERS UNION

Mr. **Bergman**. Thank you, Mr. Chairman, Congressman Dorgan, and other Congressmen on the committee.

My name is Alan Bergman. I am president of the North Dakota Farmers Union, which is the family farm organization, and I do farm and I do represent that organization as a full-time farmer.

The Farmers Union has had a long history of supporting the concept of free trade and farmers have long realized that their only hope in expanding a market for the excess food and fiber we produce lies in the open access to markets of other countries in the world. So, it is only natural that we would look to our largest trading partner, a neighbor to the north, Canada, as the No. 1 potential for expanding export markets.

With these expectations in mind, we were deeply disappointed by many of the provisions contained in the free trade agreement and their largely detrimental effect on North Dakota agriculture.

The negotiations and negotiators who worked on the free trade agreement found that there were many issues very difficult to resolve. However, in their quest for some kind of free trade agreement, they chose to ignore the issues we feel that fatally flaw the final agreement.

The procedures by which Congress must act on this free trade agreement give us great concern. Adding amendments to the agreement, I understand, is impossible. The free trade agreement, as drafted, is very favorable to the financial community and to the service industries which are predominantly on the coasts of the United States.

The agreement is not favorable to the citizens who live in a producer economy, such as North Dakota. We believe that the concessions made to guarantee adoption of the free trade agreement favor the financial and service sectors at the expense of the production and agricultural sectors, and that is our basic concern.

The free trade agreement does not address the serious major issues that must be resolved before a fair trading system can be evolved for either of our nations.

Most of these issues that I have cited in the testimony provided to you have all been covered previously by the previous speakers. So, I am just going to highlight them, if I can.

The exchange rate, the Governor covered—that is a major concern for us in agriculture. I think it puts us at a serious disadvantage. So, that has to be addressed.

The transportation subsidies have to be addressed, and the loss of section 22. We have had numerous people discuss this, but I want to just add that article 401 in the agreement states that "neither party shall increase any existing customs duty or introduce any customs duties on goods originating in the territory of the other party."

This has the effect of nullifying section 22 of the Agricultural Act of 1935, which allows U.S. restrictions on imports when they interfere with the conduct of domestic farm stabilization programs.

Section 22 is recognized under the GATT since it predates the GATT. Any change in section 22 or its termination should not be considered by Congress as part of a bill which has a closed rule. You should consider it under its own merits.

The other areas I think we have addressed are some of the other major differences in the grain marketing system, the very restrictive Canadian regulations, the sugar provisions which we have major concern over, and also the energy issues yet to be resolved. I believe that the Canadian Government owns much of the electrical energy that is going to come down here. As the Governor has outlined, it is going to be sold at avoided cost, and that free access to our energy markets adversely affects a number of jobs in North Dakota. That could reach 4,000 jobs because of our building of the energy industry over the past several decades.

And, also, I would like to bring your attention to the fact that much of that energy and the production of energy is consumer-owned in our State and is going to affect our farmers doubly because we provided much of the capital to build those facilities to provide service to our farmers.

If we are going to have to pay for our facilities and pay for the facility producing Canadian energy also, it is going to be a real detriment to our farm members.

The Governments of the United States and Canada are committed to a policy of phasing out so-called agricultural subsidies in ten years. This agreement as presently drafted is to be used at the Uruguay round of the GATT negotiations to further that goal.

Rather than using this approach, we would rather have a worldwide conference to address the issues which are restricting free trade in agriculture and resolve those issues on a multi-lateral basis rather than a bilateral approach to it.

Lastly, I would like to address the proposed method to resolve the disputes and, Mr. Chairman, you are probably much more familiar with than I, and you have addressed it. However, we do have real concerns over this. This idea is certainly innovative and innovation is not inherently bad. However, this disputes settlement provision is also on a fast track with this agreement.

We would caution before implementation that we carefully consider the ramifications before we put such powers in an independent board. There are many issues, we believe, that the negotiators have left unresolved to achieve this agreement. I would like to call your attention to—and it is included in the testimony provided to you—the priorities of U.S. trade legislation which are the recommendations of the National Farmers Union. The National Farmers Union is organized in 23 States and has major concerns.

So, it is not only a North Dakota issue. We are concerned nationally about it.

We would recommend disapproval of the free trade agreement and ask Congress not to ratify the document as currently drafted, but, instead, resubmit it for renegotiation.

Thank you very much, Mr. Chairman.

[Statement of Mr. Bergman follows:]

RECOMMENDATIONS ON THE FREE TRADE AGREEMENT
PREPARED BY THE NORTH DAKOTA FARMERS UNION
FOR PRESENTATION AT THE
HOUSE WAYS AND MEANS SUBCOMMITTEE HEARING
MARCH 11, 1988
FARGO, NORTH DAKOTA

My name is Alan Bergman. I am President of the North Dakota Farmers Union, which is a family farm organization of over 32,000 family farm members in the state of North Dakota.

The Farmers Union has had a long history of supporting the concept of free trade. Farmers have long realized that their only hope of expanding markets for the excess food and fiber we produce lies in open access to the markets of the other countries of the world.

It is only natural that we would look to our largest trading partner, our neighbor to the north, Canada, as a number one potential for expanding export markets. With these expectations in mind, we were deeply disappointed by many of the provisions contained in the Free Trade Agreement and their largely detrimental effect on North Dakota agriculture.

The negotiators who worked on the Free Trade Agreement found that there were many issues that were very difficult to resolve. However, in their quest for some kind of free trade agreement, they chose to ignore issues that we feel fatally flaw the final agreement.

The eleventh hour nature of the final acceptance of the agreement and the procedures by which Congress must act on this Free Trade Agreement give us great concerns. A complex agreement affecting many facets of business between two giant economic trading partners, adopted on a fast track, 60 to 90 day time frame, strikes us as extremely dangerous. Adding amendments to the agreement would be impossible.

Should the agreement be accepted, and should there be necessity for correction, there is no real mechanism for settling disputes effectively and fairly.

The Free Trade Agreement, as drafted, is very favorable to the financial community and the service industries which predominate on both coasts of the United States. The agreement is not favorable to citizens who live in a high-producer, low-consumer economy such as North Dakota.

We believe that concessions made to guarantee adoption of the Free Trade Agreement favor the financial and service sectors of the economy at the expense of the production and agricultural sectors.

The Free Trade Agreement is seriously flawed in that it does not address a series of major issues which must be resolved before a fair trading system can evolve for either of our nations.

Major Issues

1. The exchange rate

   Canada enjoys a 30 percent advantage in exchange rates. Until our currencies are equal, or this exchange rate discrepancy is taken into account, U.S. agriculture will be at a serious disadvantage.

2. Transportation subsidies

   Canada is allowed to maintain its CROW rates when exporting grain to U.S. eastern ports. This concession greatly disadvantages U.S. producers in the upper Midwest.

3. Loss of Section 22

   Forbidding the United States to raise quotas while allowing the Canadians to maintain their system of export licenses seriously disadvantages U.S. producers in many situations and allows them no redress via the import quota method.

4. Major differences in the grain marketing system

   Canada maintains a two-price system and protects the domestic producer by pricing domestically consumed grain at a relatively high rate while pricing export grain to meet competition. Canada markets its grain through a central marketing system which allows it a much greater market power than is available to a U.S. producer. The U.S. market is also a bigger target for Canadian grain exports than vice versa.

5. Very restrictive Canadian regulations

   Canada maintains an import licensing program which can only be utilized to import grain when no Canadian grain is available and grain can only be imported to a specific site. Canada has no protein premiums which are very important to marketing grain in the U.S.

6. Sugar provisions

   Products with ten percent or less sugar content would move duty free. This concession would permit U.S. sugar users to move to Canada and utilize cut-rate world sugar to undermine the U.S. sugar program.

7. Energy issues left unresolved

   The Canadian government owns much of Canada's electrical energy producing facilities. This allows their government to subsidize the production and sale of the electrical energy. Many times, that energy is marketed at avoided costs, which are very difficult for U.S. energy producers to compete with. The Canadian government maintains environmental standards which are much below those required of U.S. producers. Both in the area of land reclamation and stack emissions, the Canadian requirements are considerably less stringent. In addition, Canadian free-access to U.S. energy markets would cost North Dakota approximately 4,000 jobs. An economy such as ours, suffering from the agricultural and energy recessions, could not withstand such a major adverse impact.

While these major shortcomings in agricultural and energy trade policies would be enough to warrant the rejection of the Free Trade Agreement, we feel that its major fundamental error is that it is a bilateral agreement which attempts to address issues that can only be effectively addressed by a multilateral agreement.

The governments of the United States and Canada are committed to a policy of phasing out all so-called agricultural subsidies in ten years. This agreement, as presently drafted, is to be used at the Uruguay Round of the GATT negotiations to further that goal. Rather than using the battering ram approach, the course we are currently on, we urge that all the trading countries of the world participate in a worldwide conference to address the issues which are restricting free trade in agriculture and resolve those issues on a multilateral basis.

The bilateral Free Trade Agreement between the U.S. and Canada will fall woefully short of the goals of such a worldwide negotiating session. In fact, it has the potential of generating adverse sentiment and escalating the already tense situation in world trade.

Lastly, I would like to address the proposed method to resolve disputes which will inevitably arise. The United States and Canada would empower a five-person panel to moderate disputes between two sovereign countries. It seems that this proposed methodology gives away too much of each government's power to a non-government entity which would operate outside established channels. This is an untested idea, open to many questions as to effectiveness and constitutionality. The idea is certainly an innovative idea, and innovative ideas are not inherently bad; however, this dispute settlement provision is also on a very fast track as is the entire Free Trade Agreement. We urge caution before implementation of such a powerful independent board.

The Free Trade Agreement as it has been proposed for ratification without amendment is a most ill-advised and damaging agreement for the state of North Dakota. There are many issues which the negotiators have left unresolved to achieve an agreement in the closing hours of the negotiating period. These very sticky issues must be resolved before any long-term and fair trade policy can be established between our two countries.

I would also like to draw your attention to a document called "Priorities in U.S. Trade Legislation," which is the recommendation of the National Farmers Union as submitted to the U.S. House Committee on Agriculture, dealing with the Free Trade Agreement. I ask that this document be included as part of our testimony and part of the record.

Again, we recommend disapproval of the Free Trade Agreement and ask Congress not to ratify the document as currently drafted and instead resubmit it for renegotiation.

Thank you very much.

PRIORITIES IN U.S. TRADE LEGISLATION

RECOMMENDATIONS OF THE
NATIONAL FARMERS UNION

Submitted to the
U.S. HOUSE COMMITTEE OF AGRICULTURE
Washington, D.C., February 26, 1988

Within a few days, the 86th annual convention of National Farmers Union will convene in Albuquerque, New Mexico, and the delegates will adopt new recommendations on economic, agricultural and trade matters. The convention will certainly address itself to the subject of the U.S./Canada Free Trade Arrangement (FTA) and we will promptly transmit to you such further views as may have been adopted. However, a preliminary assessment is in order and can be made.

The 1987 NFU policy statement adopted last March in Ft. Worth, Texas, anticipated many of the trade problems which would be troublesome during the year. Pertinent provisions of the 1987 policy statement appear in EXHIBIT A, attached.

Before addressing ourselves to the specific provisions of the FTA, we consider that at least two other trade measures should have a higher priority than the U.S./Canadian agreement.

H.R. 3, the Trade and International Economic Policy Reform Act should have the top priority. The Textile bill should have the next priority.

Until action on those two bills has been completed by Congress and signed into law, no action should be taken on the FTA.

There is a fundamental error, in our opinion, in attempting to deal on a bilateral basis with trade problems which should be handled on a multilateral level.

The underlying problem in world agricultural commerce is not access to markets, but debased prices far below any acceptable level in relation to costs of production of efficient producers. It is not possible to address the price problem in bilateral negotiations. Rather, talks need to be in a global context with producing and importing countries fairly represented.

The Farmers Union has made a close examination and careful study of the draft of the Free Trade Arrangement and we find it totally unacceptable in its present form.

As many as ten substantive changes would have to be made in the treaty and the best course therefore would be for Congress to send it back for renegotiation. Unless the deletions which follow are made, the treaty should be rejected.

Our objections to the Treaty follow:

The most ill-advised and damaging provision occurs in Article 701(1) which places the U.S. Congress and the Canadian Parliament on record supporting President Reagan's proposal to phase out all farm programs in all countries within ten years.

Article 701(1) declares:

"The parties agree that their primary goal with respect to agricultural subsidies is to achieve, on a global basis, the elimination of all subsidies which distort agricultural trade, and the parties agree to work together to achieve this goal, including the multilateral trade negotiations such as the Uruguay Round."

While this statement refers to agricultural subsidies, the term is interpretted abroad in such a distorted sense that it applies to all farm programs.

Proof of that can be seen in the Treaty itself. **Annex 705.4, Schedules 1 and 2,** list U.S. and Canadian programs which presumably can be judged to be subsidies.

Schedule 1 lists the following U.S. programs:

1. Payments of the Commodity Credit Corporation.
2. CCC Storage payments, Farmer Owned Reserve and Special Producer Loan Storage Program.
3. Conservation Reserve Program.
4. Acreage Reducation Program.
5. Certificate Premiums and Discounts.
6. CCC Loan Forfeiture Benfits.
7. Price Enhancing Aspects of Government Programs, such as the Export Enhancement program.
8. Advance payments.
9. Crop Insurance Programs.
10. Government Service Programs for Agriculture, including grain inspection, research, extension services programs, irrigation programs, inland waterways programs, conservation programs, ASCS, market news, standards and grading programs and targetted export assistance.

11. CCC Commodity Loans.
12. State Budget outlays.
13. Farm Credit Programs.

Schedule 2 lists the following Canadian programs:
1. Direct payments.
2. Payments under the Western Grain Stabilization Act.
3. Payments pursuant to the Special Canadian Grains Program.
4. Stabilization Payments made by Provincial Governments.
5. Income foregone adjustments.
6. Expenditures of the Canadian Grain Commission.
7. Wheat Board Pool Deficit (wheat, oats and barley).
8. Domestic Wheat Pricing.
9. Domestic Price Gap: Oats and Barley.
10. Advance Payments.
11. Crop Insurance.
12. Western Grain Transportation Act.
13. Prairie Branch Line Rehabilitation Program.
14. Research Expenditures.
15. General Support Programs of the Federal Government.
16. General Provincial Government Expenditures for Agriculture.
17. Farm Credit Programs.

It might be suggested by some that all the above programs and activities are not subsidies, but if they are not, why are they included in the draft treaty in the first place?

The attack on domestic farm programs of sovereign nations is clearly expressed in declarations of the U.S. Administration, as indicated in EXHIBIT B, attached.

Article 701(2) declares that "neither Party shall introduce or maintain any export subsidy on any agricultural goods originating in, or shipped from, its territory directly or indirectly to the territory of the other Party.

This is significant because when Canada , in 1986, imposed a 65¢ a bushel duty on imported U.S. corn, it did so on the basis that feed grains target payments were an export subsidy. That levy is still in force, now at a 46¢ a bushel rate.

Article 701(3) declares that "neither Party . . . shall sell agricultural goods for export to the territory of the other Party at a price below the acquisition price of the goods, plus any storage, handling or other costs." Yet, below cost is not well defined and could be the source of endless disputation.

Article 701(4) declares that each Party should avoid subsidized exports to third countries if such practices would have prejudicial effects on trade of the other Party. If strictly interpretted, this provision could hamper if not end, competition for markets.

Article 704 makes the U.S. Meat Import Acts of 1964 and 1979 inapplicable to trade between the U.S. and Canada.

Article 705(1) provides that the current Canadian import licenses could be lifted on U.S. wheat, barley, oats and products, if the U.S. subsidies on such products are equal to or less than the Canadian subsidies.

Article 707 allows Canadian products containing 10% or less of sugar, by dry weight, to be imported without duty. There is no limit on import of other sweeteners in combination with sugar.

Article 900 makes several concessions to Canadian energy interests, which would put U.S. industries (oil, natural gas, coal and uranium) at a disadvantage and act as a disincentive to U.S. exploration and drilling.

Article 1904 provides that judicial review of antidumping and countervailing dity determinations by appropriate courts (such as the U.S. Court of International Trade and other courts) would be replaced by arbitration by a supra-national panel of five political appointees of the U. S. President and the Canadian prime minister.

Article 401(1) provides that "neither Party shall increase any existing customs duty, or introduce any customs duty, on goods originating in the territory of the other Party." This has the effect of nullifying Section 22 of the Agricultural Act of 1935, which allows U.S. restrictions on imports when they interfere with the conduct of domestic farm stabilization programs. Section 22 is recognized under GATT since it predates the GATT pact. Any change in Section 22 or its termination should be considered by Congress on its own merits, not as part of a bill under a closed rule.

In conclusion, each one of the above Articles needs to be deleted before further consideration of the Treaty proceeds.

EXHIBIT A

1987 POLICY STATEMENT OF THE NATIONAL FARMERS UNION

Adopted March 1-4, 1987, Ft. Worth, Texas

ARTICLE III

INTERNATIONAL COOPERATION AND THE FAMILY FARM

American farmers today live and sell their products in a global food and agricultural economy. The prices they receive are dependent to an important degree upon what their commodities will bring in world trade. Such prices, in turn, are destined to be weak unless there are cooperative efforts among nations to maintain prices for raw commodities at fair levels and provide for orderly conduct of commerce.

A. Access to World Markets

Farmers need and desire to be assured that they will have the right to sell their products in world markets if they are to maintain their productive capacity to serve the world market. Farmers are concerned that there have been several stoppages of U.S. farm exports by government during the past 18 years, and that the power to restrict exports is institutionalized in the Export Administration Act.

We appreciate adoption of the contract sanctity provisions by Congress, but feel that this does nothing to increase prices in the event of a trade stoppage. Therefore, we urge Congress to require that 100 percent of parity price supports be automatically triggered if future embargoes are imposed, whatever the reason.

We recommend amendment to the Commodity Credit Corporation (CCC) charter to provide for establishment of an agricultural commodities marketing board, elected by agricultural producers, to negotiate and transact export sales of agricultural commodities produced in the United States.

This national agency should be the exclusive contracting agency for the sales and pricing of all agricultural commodities that are imported or exported, and should give preference to farmers' cooperatives in selecting agents of the board for handling export sales.

Access to export markets is important but, if there are to be future gains in export earnings, they will more likely have to come from higher prices on grains. Export subsidy programs without measures to raise the level of grain export prices are likely to be self-defeating for the reason that they are, in effect, grain price reductions and are apt to result in a grain price war harmful to all exporters.

The exportation of American-grown food and fiber at prices that are less than the cost of production amounts to the exportation of our land, water, petroleum, and other natural and human resources for less than their true value. All international trade policies must be formulated with this vital consideration in mind.

B. Avoidance of Trade Wars

Because the United States maintains a large agricultural trade surplus with many of its trading partners, the American farmer stands to lose the most in a trade war.

Resumption of healthy world trade will come when international currencies are more in line with historical relationships.

C. International Trade Agreements

The Uruguay Round of Trade liberation talks has begun under the General Agreement on Tariffs and Trade (GATT). We are concerned that the negotiations will do more harm than good for agriculture if the emphasis is placed, as some are advocating, on dismantling the domestic farm stabilization programs of major exporting nations. Congress should, therefore, make clear that no provision of the agreement should take precedence over existing U.S. law (particularly Sec. 22).

D. U.S. Trade Deficits and National Trade Policies

It appears that the 1987 U.S. trade deficit will exceed the 1986 deficit by several billion dollars. Such massive trade deficits mandate that this nation change its international trade policy initiatives. No other nation permits its basic industries, including agriculture, to be at the mercy of the international marketplace. The current Administration's trade policy has already resulted in the loss of thousands of family farmers and the weakening of other domestic industries.

The United States must recognize that free trade will always remain a goal, rather than a full reality, even under the best international trade negotiations and agreements. Because of internal economic, social, and political imperatives, other nations will continue to protect their agricultural producers and other basic industries.

Therefore, United States trade policies must shift away from "free market" confrontations and reprisals, and toward practical, bilateral, and reciprocal trade arrangements, beginning with those nations with whom we have deficits.

Pending the implementation of reciprocal agreements on international commodity pricing pacts, the United States must use its position as the single larger importer of goods in the world to gain access to foreign markets for our products. If our domestic marketplace is to remain open to these trading partners, then they must provide reciprocal trade opportunities and access to their markets for our exports.

To enforce reciprocal trade arrangements, we would support countervailing duties and/or quotas from nations which have consistent trade balance surpluses with the United States. Such countervailing duties and quotas would be eliminated as access is provided to United States agricultural products and other exports to their domestic markets.

We believe that agricultural exports in reciprocal trade agreements must be a primary means of balancing our current trade deficits.

EXHIBIT B

REAGAN ADMINISTRATION STATEMENTS ON AGRICULTURAL OBJECTIVES IN THE URUGUAY ROUND OF TRADE TALKS

The U.S. proposal to end all domestic farm programs in all nations within ten years is clearly spelled out in the governmental declarations. Emphasis is added by underlining in some instances below:

The major U.S. objectives for agriculture once the multilateral trade negotiations are officially opened are:

1. to freeze the present level of export subsidies used in agricultural trade and to phase out the use of these subsidies over time,

2. to stop the growth of new barriers to agricultural trade and to phase out nontariff barriers that now exist,

3. to achieve greater harmonization of international food and plant and animal health regulations in order to facilitate greater international trade, and

4. to improve the dispute settlement process under GATT, so that once trading nations have agreed on better rules, there can be assurance that they will be applied consistently and dependably.

—Source: USDA /FAS Fact Sheet

AGRICULTURE IN THE URUGUAY ROUND

The United States has proposed the elimination of all policies that distort world agricultural production, prices and trade. Since domestic farm programs and trade policy are fundamentally bound together, free trade in agriculture requires reform of domestic agricultural policies as well as border measurees such as tariffs and quotas.

Many countries use a variety of policy measures that subsidize production or raise prices to consumers. These measures include tariffs, import quotas, variable import levies, export subsidies, price supports, direct government payments based on output levels, paid land diversions, production or input quotas, and subsidies for storage and inputs such as fertilizer, credit, insurance, fuel and transportation.

In most wealthy nations, where agriculture is a small part of the economy and generally has been heavily subsidized, farm programs have become increasingly distortionary, leading to higher farm prices relative to world prices, more restrictive import barriers, and increased government subsidies.

The most serious distortions and barriers related to international agricultural trade are caused by domestic programs in the industrialized countries that transfer income from consumers and taxpayers to owners of agricultural resources. Because these programs have been considered part of domestic policy, rather than international trade policy, it has been particularly difficult to include them in international negotiations.

In July 1987 the United States put forward a GATT proposal on agriculture . . . those programs that have a direct or indirect effect on international trade, including output subsidies, would be restricted.

—Source: ECONOMIC REPORT OF THE PRESIDENT, February, 1988

Chairman GIBBONS. Thank you. And, now, Mr. Shockman.

STATEMENT OF KELLY SHOCKMAN, PRESIDENT, NORTH DAKOTA NATIONAL FARMERS ORGANIZATION

Mr. SHOCKMAN. Mr. Chairman, Chairman Gibbons, members of the committee, for the record, my name is Kelly Shockman. I am a farmer from Lamoure, N. Dak., and I am here today representing the North Dakota National Farmers Organization, and just as an interesting comment, we do meet on a regular basis.

The North Dakota Farm Bureau, the North Dakota Farmers Union and the National Farmers Union do meet on a regular basis trying to find some common areas of agreement. I think that is good, and we appreciate that you have arranged this hearing to examine the provisions of the United States-Canadian Free Trade Agreement.

It is requested that this statement be made a part of the record.

Chairman GIBBONS. Certainly.

Mr. SHOCKMAN. And, Mr. Chairman, with your permission and in the interest of time, I would like to—I do have a written text. Could I skip part of it?

Chairman GIBBONS. Sure. Just summarize it either way you wish.

Mr. SHOCKMAN. The officers of the organization are deeply perturbed by the proposal of substantive review by a binational panel for judicial review and antidumping in countervailing duty cases.

If approval of this agreement establishes this arrangement without constitutional challenge, you will have put the congressional stamp of approval on an arrangement that will severely limit your, or our, ability to modify price support provisions of law in the future.

It can be contended fairly, that the reference to removal of licensing on grain movements as qualified by a comparison of price support levels operative on both sides of the border, will price support for grain in our farm economy, talking about the Americans, be affected?

At a minimum, you will be subjecting congressional action along these lines to challenge from the Department of State and other authorities who will be only concerned primarily with conduct of foreign affairs or some other issue.

The provisions of the 1985 Farm Act, American producers must now depend heavily on government subsidy for their income. Roughly stated, our subsidy levels are nearly twice the level of similar assistance extended to growers from Canada. So, this question arises, do the sponsors of this agreement contemplate reducing our price support levels by one-half as a good will gesture after this agreement is approved or do we raise Canadians subsidies?

Another serious question arises relating to section 22, and I will not go into that, except to say administration spokesmen contend that section 22 of our current law will remain in effect when questions are raised on other commodities. But they have agreed not to impose that long-standing provision of law that protects our producers from competition with subsidized imports in the case of grain.

We are told that the Canadian Import Authority will continue the heavy countervailing duty on U.S. corn. Now, I understand recently on corn—the countervailing duty had been dropped from $1.10 to 46 or even lower, and I think the National Farmers Organization—I would like to make a statement here that is not in your text since we contend—that America has been, still is the dumping ground of all the free food in the world, and we are concerned about that, and the language involved in this agreement.

Skipping one paragraph, a lot of emphasis has been placed on the impact that a bi-lateral agreement with the Canadians will have on future general agreements on trade and tariff or GATT negotiations. If we cannot reach a free trade agreement with our friendly neighbors next door, what chance do we have with other countries in GATT negotiations?

This is an important part of my testimony. This rationalization only makes sense if you honor the illusion that free trade between countries, at least in food, is realistic or achievable. On the contrary, the questions raised by this proposed agreement relating to monetary exchange rates, constitutionally economic standings, and so forth dramatically illustrate the impracticability of attempting to achieve a global free world market on all trade commodities.

As we understand the agreement, business investments up to a $150 million may move from United States to Canada without screening by the Canadian Government. This being the case, the question we raised, what is to prevent another substantial movement of capital from smaller communities in rural America into the Canadian economy.

This agreement is a serious, long-term commitment by both the United States and Canada and should be considered as a treaty, in our opinion, that would possibly require a two-thirds vote of approval by Congress instead of an agreement that can be approved by a simple majority.

There is another area of big concern. The fast track or the all or nothing approval process seems to be an attempt to jam or ram the agreement through our legislative process without proper time for discussion, analysis and understanding of what the agreement really does to American and Canadian farmers.

Like the Food Security Act of 1985 or, as a lot of farmers I have talked to call it, the Farm Liquidation Act of 1985. The language in the FTA is a complex, confusing, and ambiguous with words and phrases that can mean so many different things. Depending on who is interpreting those.

Here, I would like to leave the text. I deal with farmers every day, and we are still trying to get healed up from the 1985 farm bill. Believe me. And these farmers that I visit with are very concerned that if we ratify this without knowing what is in it, we are going to be right back into the same mess without even having solved the old one.

For example, the Food Security Act, this agreement will pit farmer against farmer on both sides of the border and the big gainers, it appears, will be the giant multinational corporations and buyers of farm commodities.

Now, there is a group in Canada called the Canadian Wheat Board, I believe they call it, and they have the authority to sell lots of grain and they do, and I want to submit at this point that with commodity credit dumping all this grain on our markets, I think maybe we have the same thing already in place.

The farmers are very concerned about the dumping of wheat and we understand that the commodity credit will be dumping possibly up to 2 billion bushels of corn on our market in the next few months, very serious matter.

On March 2, 1988, the North Dakota National Farmers received very much correspondence from the Canadian National Farmers Union, who we feel is the Canadian farm organization that truly represents Canadian farm producers, and I just want to quote from the president of the Canadian Farmers Union, and I think it really sums the whole issue up as far as farm producers are concerned.

> We believe that there are serious negative consequences for producers in both countries. The agreement will be a good deal for the corporate sector in that the negative competition created by trading Canadian farmers against American farmers in each other's markets will tend to drive prices downward.

I think probably here is the meat of the National Farmers Organization's testimony dealing with the problems that we are all dealing with here today. We respect all the work that went into this agreement, but we would like to submit that food is different, and getting back to the prepared text, the North Dakota National Farmers Organization members do not believe there is any such thing as free trade, at least in world food.

Countries, and people, too, buy food because they have to have it, not because it is cheap or plentiful or going out of style. I think this is very basic. Every nation, especially those who have had their people go hungry in recent years because of poor crops or war, can and will protect their domestic food producers and domestic food supplies.

Food is a commodity that everyone needs every day of their lives and no nation wants to depend on some other country for their food supply. Countries will always have internal rules, regulations, tariff, duties or whatever you want to call it to try to assure an adequate supply of such an important commodity as food for their people.

This, to me, is the guts of the whole problem. We will never realistically be able to market our food in a lot of countries because of the nature of the commodity.

Not that I am against free trade. I think it is very necessary, at least in hard goods, but I think food should be treated a little different.

I would like to comment a little bit here on the theory of free trade, and this has been mentioned by my counterparts beside me. The theory of free trade should be laid to rest along with the theory of supply and demand. The word should be called fair trade.

I think this is the thing that we really have to deal with. Fair trade for American farmers, fair trade for Canadian farmers. Admittedly, this testimony is from a farm producer perspective. Some will even say that, from a narrow point of view, nevertheless, a very important point of view.

Agriculture, production of food, is the biggest and most important industry in the world. No question about it. Farmers, all farmers have a great deal invested in what happens in this agreement.

I would like to say in passing that the National Farmers Organization, we are only farm producers. We have no other vested interest, except to look out for the interests of the farmer and this is the reason for the narrow point of view that you are getting.

Mr. Gibbons, members of the committee, I would just like to make another statement in passing not related to the issue at hand, but there are people saying that the farm crisis is over. The same people who have said there never was a farm crisis are now saying that it is over. Believe me, this is not true.

This is a very serious matter.

Chairman GIBBONS. You are right.

Mr. SHOCKMAN. The transfer of wealth caused by low farm commodity prices is just sucking rural America dry, and you can look down the road 25 and 30 years and this is just going to be a desert out here, mainly because of this transfer of wealth.

I want to apologize for the threat of snow that we are having here, but if it does snow and if you have trouble getting from here to the airport now, the new snow will not be any problem, it is this old snow left over from last winter. You have to be careful not to hit that.

I would like to request a copy of all the testimony.

Chairman GIBBONS. This will be published and ready for distribution.

Mr. SHOCKMAN. And my sincere recommendation, Mr. Chairman, members of the committee, and I know there is a lot of work went into this, and I hate to say you start all over, but I do not think that you can handle food in the same context as refrigerators and automobiles.

I think this is one of our inherent problems with this agreement. I would say that if you restructure this agreement, treat food as a separate item and if you would ask me, Mr. Chairman, after all this testimony, if this is approved, are the farmers worse off or better off? I would say the farmers are worse off, but I will guarantee that Cargill and Burlington Northern and the multicorporate structure will be a lot better off.

I appreciate this opportunity to appear before your committee and will answer any questions.

[Statement of Mr. Shockman follows:]

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NATIONAL
FARMERS
ORGANIZATION

NORTH DAKOTA NATIONAL FARMERS ORGANIZATION

MARCH 11,1988

The honorable Sam M. Gibbons
Subcommittee on Trade on Ways and Means
U.S. House of Representatives
Washington, DC. 20515

Dear Mr. Chairman:

We appreciate that you have arranged a hearing to examine the provisions of the U.S.-Canadian Free Trade Agreement. It is requested that this statement be made a part of the record.

There are substantial issues arising from the very nature of this agreement and the efforts of its sponsors to secure quick approval in the Congress. We believe a number of consequences of this agreement, if it is approved, will be damaging to the economy of rural communities, in addition to its specific undesirable provisions relating to trade in farm products. For example, we believe one observer was quite correct in saying that this is not truly a free trade agreement, although it might eventually eliminate a number of tariffs. It leaves in place a number of antidumping and countervailing duty arrangements without defining their use in the future.

Officers of our organization are deeply perturbed by the proposal to substitute review by a bi-national panel for judicial review in antidumping and countervailing duty cases. If approval of the agreement establishes this arrangement without Constitutional challenge, you will have put the Congressional stamp of approval on an arrangement that will severaly limit your ability to modify price support provisions of law in the future. It can be contended fairly that the reference to removal of licensing on grain movements, as qualified by a comparison of price support levels operative on both sides of the border, will prove to be an outright limitation on your ability to increase price supports for grain in our farm program. At a minimum, you will be subjecting Congressional action along these lines to challenge from the Department of State and other authorities who will be only concerned primarily with the conduct of foreign affairs.

COLLECTIVE BARGAINING FOR AGRICULTURE

We are deeply concerned about the grain provisions of the agreement. While opening our border to Canadian grains, the sponsors brag about eventual elimination of the import license requirements of U.S. grain moving to Canada. That becomes effective, however, only when price support levels have been equalized.

Under the provisions of the 1985 Farm Act American producers must now depend heavily upon Government subsidy for their income. Roughly stated, our subsidy levels are nearly twice the level of similar assistance extended to growers in Canada, so this question arises: do the sponsors of this agreement contemplate reducing our price support levels by one-half as a good will gesture after this agreement is approved?

Another serious question arises relating to grain. Administration spokesmen contend that Section 22 of our current law will remain in effect when questions are raised on other commodities, but they have agreed not to impose that long-standing provision of law that protect our producers from competition with subsidized imports in the case of grain. We are told that the Canadian import authority will continue the heavy countervailing duty on U.S. corn.

Although Canada has volunteered to cease subsidies on wheat moving to the Western ports, no similar action has been taken with respect to the large movement from the wheat area to the East Coast export points. In other words, it would appear that our soybean meal and oil might pick up some slight advantage on the West Coast in competition with rapeseed oil and meal, but this market is a long haul from our major soybean producing areas, so any supposed advantage for our soybean producers may be quite minor in the overall context of the agreement.

A lot of emphasis has been placed on the impact that a bilateral agreement with the Canadians will have on future GATT negotiations; i.e., if we can't reach a free trade agreement with our friendly next-door neighbor, what chance do we have with other countries in GATT negotiations? This rationalization only makes sense if you are under the illusion that "free trade" between countries is realistic or achievable. On the contrary, the questions raised by this proposed agreement relating to monetary exchange rates, constitutionality, economic standing, etc. dramatically illustrate the impracticability of attemtping to achieve a global free world market on all trade.

As we understand the agreement, business investments of up to $150 million may move from the U.S. to Canada without screening by the Canadian Government. This being the case, what is to prevent another substantial movement of capital from the smaller communities in rural America into the Canadian economy?

This agreement is a serious long-term committment by both the U.S. and Canada and should be considered as a treaty that requires a two-thirds vote of approval by our congress instead of an agreement that can be approved with a simple majority vote.

The "Fast Track' and"all or nothing" approval process seems to be an attempt to Ram the agreement thru our Legislature without proper time for disscusion, analysis, and understanding of what the agreement does to American and Canadian Farmers.

Like the Food Security Act of 1985, or the Farm Liquidation Act of 1985 as many people call it, the language in the F.T.A. is complex, confusing, and ambigeous with words and phrases that can mean many differant things, depending on who is interpeting them.

This agreement will pit farmer against farmer on both sides of the border and the big gainers will be the giant Multi-National Corporations and buyers of farm commoditys.

On Wed, March 2, 1988, the ND. NFO. recieved much corespondance from the Canadian National Farmers Union who we feel is the Canadian Farm organization that represents Canadian Farm Producers. Wayne Easter, Pres if the Canadian N.F.U. stated as follows " We believe their are serious negative consequences for producers in both countrys. The agreement will be a good deal for the Corporate Sector in that the negative competition created by pitting Canadian Farmers against American Farmers in each others markets will tend to drive prices (Farm commodity) down."

The North Dakota National Farmers Organization members do not believe there is any such thing called "Free Trade", at least in world food trade. Countrys,and people too,buy food because they have to have it, not because its cheap or plentyfull or going out of style. Every Nation, especially those that have had their people go hungry in recent years because of poor crops or war, can and will protect their domestic food producers and domestic food supply. Food is a commodity that everyone needs, every day of their lives, and no Nation wants to depend on some other country for their food supply. Countrys will always have internal rules and regulations to try to assure an adaquate supply of such and important commodity as food for their people.

The theory of "Free Trade " should be laid to rest along with the theory of "Supply and Demand." The word should be Fair Trade.

Admittedly, this testimony is from a Farm Producer perspective. Some will even say from a narrow point of view, but never the less, a very important point of view.

The national Farmers Organization is convinced that this agreement should notbe approved as submitted to Congress.

We thank you for the opportunity to testify in behalf of Farm Producers before your Committee.

Kelly Shockman
Kelly Shockman
Pres. N. Dak.
National Farmers Org.

Chairman GIBBONS. Thank you, sir.

Well, let me say that it has been a stimulating set of testimony. Let me just talk a little about the disputes settlement provision.

There is no doubt in my mind that it is constitutional, but as I say, the Supreme Court is going to take the last guess at that. It is really a very simple procedure. First of all, you use—you try the case in Canada, you use Canadian law. If you try one in the United States, you use the U.S. law, and that is the way things currently are.

The problem is that each one of those have got very little respect for the decisions made by the other, and that is the crux of our problem. We would like to have one uniform law we could try it under, but there is no such thing in existence. We are under this agreement going to try to work out a uniform system of law, but that could be a struggle that takes a lifetime to do that.

Fortunately, Canadian law and United States law are not terribly different in results. So, you would begin an action just as you currently begin an action in the administrative agencies in Washington, and it is not until it gets to the court level that there is any difference in the action. When it gets to the court level, when one side starts to take an appeal to the review, judicial review, then something begins to happen.

We then set up a panel, composed of two-fifths United States and two-fifths Canadian and one-fifth neutral. More than likely, the people who would be the Americans on the panel would be the current judges of the court that you now go to for judicial review. They do not have to be, but they can be. And probably the same on the Canadian side. There would be one international jurist who would sit on the case, and then you would try it under the basis of the existing national law. But the results would be binding on the parties.

There is no doubt in my mind that that can be done. We have done it in other situations that way. There are many examples of that in our history. So, I think we can do it in this case. These are rights that have been created entirely by Congress and rights that can be controlled by Congress in our constitutional rights that we are talking about.

So, it will work, and as I say, it must work because if it does not, there is no hope for civilized man ever to be able to settle any disputes.

We handle this on the fast track, but it is going to be pretty slow. The reason for fast track is not a good word, but the U.S. Government is different than every other government on Earth. Nobody has a Congress that is as ornery as ours and as cantankerous as ours and as powerful as ours is and that is a self-serving declaration there, and, so, nobody will deal with us if any agreement that can be brought can be torn all apart by Congress, and, so, what we have to do is to kind of make Congress act like the Canadian Parliament and/or the European Community or the Japanese Diet, where we do not amend something to death when we bring it back.

If we did not do that, one, we could never get anybody to deal with us and, two, we could not never get an agreement agreed to, and that is the only purpose of it.

So, it is an unusual agreement, but it has to be that way.

You are worried about dumping. If any of the Canadians try to dump any wheat into this market, they are going to be caught by our dumping clause. There is nothing in here that would license dumping into this market, and staff assures me that article 401 of the agreement affects only tariffs. It does not affect the section 22 of our Agricultural Adjustment Act, and we will certainly make sure that that is appropriately reflected in the final draft of it because that seems to be a big problem here.

But the article 22 or section 22 remedies would still be available for agricultural products.

Now, you have mentioned that the eastern bankers and the Cargill won. I do not know who won in this. There can be no tougher area to work in than we are working in right this minute on agriculture. Man has done more to screw up nature and agriculture than anything that I know of in the governmental way.

Hopefully, one day, we can sort of back out of it and let you people who grow food grow it without all of our terrific help. I look forward to that day and perhaps it will come in my lifetime, but I have severe doubts about that.

Well, Don, have you got any questions? I did not have none.

Mr. PEASE. Yes, Mr. Chairman, I do.

You had some interesting observations, as always.

Mr. Chairman, first off, I would like to commend all of our witnesses and say what a pleasure it is to have the Farm Bureau, the NFO and the NFU all sitting at the same table agreeing with one another, patting each other on the back.

I am from Ohio where that is fortunate with those three organizations in Ohio.

Mr. Shockman and Mr. Bergman, I thought unequivocally, stated the opposition of their organizations to this agreement, is that correct?

Mr. SHOCKMAN. That is correct.

Mr. PEASE. And, Mr. Burke, you raised a number of questions, but it was not clear to me whether your organization is officially opposed or not.

Mr. BURKE. Until we are more clear on the direction of some of these proposals, we would have to be opposed.

Mr. PEASE. I see.

Mr. BURKE. Because the experience has taught us that what we are looking at sometimes, we were assured back in 1986 that the sod buster provisions would not cover fields less than 50 acres, and we find now how untrue that was.

Staff assured us that swamp buster provisions would not involve mud holes and already being tilled fields, and how wrong they were and how dismayed we are at this present time, and for those reasons, gentlemen, are why we are unbelievably cautious. The experience has taught us to be that way.

Mr. PEASE. I can understand that.

Has the American Farm Bureau Federation taken a position on this?

Mr. BURKE. Yes. Our position on the American level is that we will support it. There has to be some modifications. It is not a unanimous wholehearted blind support.

Mr. **Pease**. So, if no modifications are made, you believe the American Farm Bureau Federation will be opposed?

Mr. **Burke**. I think we have to identify what we are speaking of as the American Farm Bureau Federation. You may see some indication that the American Farm Bureau board of directors has taken action either rejecting or wholehearted support. I am not going to say.

Now, let me assure you that they do not always speak for the total membership, with the unanimity that they may think they do. The house of delegates at our convention in New Orleans gave a very qualified endorsement to the investigation of the United States-Canada Trade Agreement.

Mr. **Pease**. Well, Mr. Burke, I raise those questions because members of Congress, like myself, are often confused when it comes to major farm issues before the Congress.

We would like to do what is right and we like to do what is good for not only our constituents, but agriculture as a whole, and it seems to me that in the past 7 or 8 years, in particular, the American Farm Bureau Federation has been committed to a rather doctrinaire free market/free trade position.

Sometimes when I have seen their announcements, I have wondered how what they are suggesting could possibly really be in the long-term best interests of the farmers, and I do not know whether you have, I presume you do, a democratic structure in the Farm Bureau, but I have been curious about how their policies we sometimes hear about at the federal level get made within the system when they do not seem to be reflected by the farmers and the members of the Farm Bureau that I represent back in Ohio.

Could you enlighten me on that?

Mr. **Burke**. Well, your position and your statement is well taken, and let me assure you that North Dakota Farm Bureau always does not agree with the National American Farm Bureau, and we do, on occasion, file exception to the policy adopted by the house of delegates.

I think if you would look at the turn that has taken place in the last 5 years in American Farm Bureau policy, you will find that it is a departure from what was, say, 7 years ago, and 7 years ago or 8 years ago, and I cannot be exact, you would find that the policy was almost unrestricted. Free trade policy.

There are some exceptions in there now. There are some ifs and ands in there now, and that, yes, we are for free trade and I am. I would like to see a trade agreement with Canada that we can live with, but recognizing that it is a one to ten ratio, I have some real big cautions, and I think that is where we are at now, and I do not speak with authority from the American Farm Bureau board of directors.

But I think that is where we are at now in the American Farm Bureau organization, is that, yes, we are still for free trade, yes, we still believe we have got to have an exchange of free trade if we are going to survive. We understand that, but then there are some of us that it has to be fair trade also, and some of us lack the confidence that others do.

You know, we lost the market, a big market, when Spain and Portugal joined the European Common Market, and if that has ever been settled through GATT, it was settled awful quietly because we have never heard anything about it, and at the time this incident happened, you know, we were told, hey, we have got remedy. We can go to GATT. We can get this settled.

Well, it kind of fell off over the end of the table without any of us knowing really what happened to it.

Mr. **Pease**. Thank you. One more question, Mr. Chairman.

You just raised another question that has occurred to me several times during this hearing this morning, and that is, how effective existing remedies are. We are told that Canadians are subsidizing transportation, they are subsidizing power, they are subsidizing a number of other areas, but do not worry about that, there is nothing to prevent cases from being brought under the countervailing duty or antidumping laws.

Taking the countervailing duty law, as I understand it, the Canadians have had a countervailing duty against our wheat, I think it was wheat, on the basis of our subsidies. On the basis of subsidies.

What has been your experience? Have cases, countervailing duty cases, been brought against Canadian subsidies on various commodities and, if so, have they been successful? What has been the experience?

Mr. **Burke**. Sir, I am not qualified to speak on that. I simply do not know.

Mr. **Pease**. Mr. Shockman.

Mr. **Shockman**. Mr. Chairman, Mr. Pease, I have covered that in one area and that is the rates for hogs coming across the border, live hogs, 3 and 4 years ago. We were very concerned about this. It happened that they were carting over hogs, being subsidized by the Canadian Government.

We did, in one of the very instances to my knowledge, where we did put a countervailing tariff or duty on those hogs to make them a little more competitive, but I think it is a rare occasion and it may sound that I do not like Cargill, Limited, and this is true. I am really afraid of these multinational corporations involved in this whole free trade scenario.

Mr. **Dorgan**. Let me just make a point that following the CVD case and the duty placed on live hogs, they simply started sending hams instead of hogs, and, so, they butchered them up north and sent Canadian bacon and hams. That is why, in last year's trade bill, we extended the definition so that we would be able to deal with not just hogs but also for products, and these remedies are occasionally successful, but I think a lot of people view remedies as a giant black hole.

You can file and spend enormous amount of money and often not get any resolution. If you do get a resolution, it is long after all the folks who could not survive are out of business anyway. So, there are remedies, but many producers view them with skepticism because they are so costly and so time consuming and often do not produce the result that is self-evident when you begin.

Mr. **Pease**. Mr. Chairman, I am acutely conscious that the more I talk, the more risk we run that it will start snowing and we will still be here on Sunday and Monday. I will not say anything further, except that I would hope that our committee can look at how practical it is to bring countervailing duty cases—what the timing is, what the assurance of relief is, and what the costs of bringing the action is—so that we can make a judgment about whether the availability of remedies to foreign subsidies really are effective or whether it is something that is largely on paper.

Thank you.

Chairman GIBBONS. Thank you, Mr. Pease.

Mr. Dorgan.

Mr. DORGAN. Let me just make two brief points.

First, Mr. Burke talked about the surprises that have developed as a result of the number of federal initiatives, and it is important to note that almost none of the surprises have been pleasant surprises. Often, surprises are pleasant or unpleasant, but almost universally, swamp buster, sod buster, other initiatives have produced surprises that are not ones any of us would enjoy or anticipate.

The last page of your testimony Mr. Shockman, in which you talked about free markets, almost parallels something that Galbraith had written awhile back. He pointed out the difference between the theology and the practice of those who chant about free markets continually. Washington certainly has been full of them for the last 7 years.

You and Galbraith refute the whole notion that if you just set everybody afloat into the free market, it will be wonderful. There have never been free markets and will never be free markets in agriculture for predictable and reasonable reasons. It just will not happen. It is pure theory and Galbraith described it as a theology of those who chant it continually.

What is anticipated in the free trade agreement with Canada is an attempt to remove some impediments across the border in the commerce that is routinely and normally conducted between a couple of countries. But that is different than the more general question of will agriculture or should agricultural producers be set free into something called the so-called free market.

This free market rhetoric is crazy stuff. There is not a free market. A truly free market would set our producers free and they could produce as much as our bounty would allow, and then sell it at below the cost of production. That is foolish. I mean, historians will look back at us and scratch their heads and wonder what on earth possessed us to believe we were doing something reasonable.

So, the testimony that all of you have presented is very good.

Mr. Bergman, your national convention, I believe, just finished meeting.

Mr. BERGMAN. Yes, sir.

Mr. DORGAN. Is the resolution here from that convention?

Mr. BERGMAN. No, sir. You know, I just came back last evening. So, I have it with me, but it has not been printed, but we will get that to you for the record.

Mr. DORGAN. Well, your testimony is excellent, and let me reiterate, it is nice to see, again as I have in the past on several occasions, the three major farm organizations seated together and speaking on behalf of the same families with one voice.

Mr. BERGMAN. Mr. Chairman, if I may, I think that I would like to just reiterate what the Congressman just said. I think we are really concerned about the massive trade deficits and I think that this—we need to correct that in our whole scope of international trade policy initiatives that I know your committee deals with. So, I would hope you take a look at that, and also just closing, I think that the trade reform bill and the textile bill should be taken up by Congress as part of this bill because they are probably more important in my mind than this bill, and I understand this bill is going to be taken up, but that is our position.

Chairman GIBBONS. Mr. Shockman.

Mr. SHOCKMAN. Mr. Chairman, is there any way, and to the members of the committee, any way we can get some language into this agreement to—I am not concerned about the Canadians dumping. I am more concerned about commodity credit dumping, and I think this will have a profound effect on our prices and also you could tie the two together even with Canadian producers.

This is a serious matter. When we have got too much—we have a severe transportation problem, Congressman Dorgan, and this dumping is just aggravating the situation very seriously.

Chairman GIBBONS. That is not within the jurisdiction of the Ways and Means Committee, and I do not think we can put it in this agreement.

Gentlemen, thank you all very much for coming and helping us with understanding this a little better.

Mr. BERGMAN. If I may, yes, I picked this up this morning, and it is dated March 7, for the benefits of the United States-Canadian Free Trade Agreement for North Dakota, and I guess I do not know. Well, it says who puts it together, but this is the first time we have——

Mr. DORGAN. The Commerce Department prepared that.

Mr. BERGMAN. Yes. We cannot do a full analysis by just sitting here, but I think there are some major flaws in it, and I was wondering who could address these flaws to it, because of the numbers they are presenting to us. They are not accurate, and I am a farmer, and I just know that you have got various wheel tractors going into Canada, yet coming back the other way they list none, and I know for a fact that that is wrong.

Chairman GIBBONS. I have not read—I have read the document, and I am always skeptical of anything the Government prepares. So, we will take a look at it and if the Commerce Department—Mr. Verrity is the Secretary, and we will—I am sure your congressman will provide you——

Mr. DORGAN. Send it to me and let me get it to the committee and Commerce and we will see how we can reconcile the disparities.

[The following was subsequently received:]

SUPPLEMENTAL TESTIMONY
PREPARED BY THE NORTH DAKOTA FARMERS UNION
FOR PRESENTATION TO THE
HOUSE WAYS AND MEANS SUBCOMMITTEE HEARING
HELD MARCH 11, 1988
FARGO, NORTH DAKOTA

My name is Alan Bergman. I am President of the North Dakota Farmers Union, which is a family farm organization of over 32,000 family farm members in the state of North Dakota.

During the oral portion of my presentation to the Subcommittee Hearing held in Fargo, ND, Representative Byron Dorgan asked that I review the document produced by the United States Department of Commerce entitled, "Benefits of the U.S.-Canada Free Trade Agreement for North Dakota." This document was prepared by the office of Canada's International Trade Administration, U.S. Department of Commerce, Room 3033, Washington, DC 20230.

The document speaks to the advantages of trade liberalization agreements, such as the European Free Trade Agreement, the Australia-New Zealand Closer Economic Relations Trade Agreement and the European Economic Community.

While we agree there are many advantages in liberalizing worldwide trade, we are not naive enough to believe that each of these documents has produced only winners. In our research concerning the European Economic Community, we are constantly struck by the fact that there are both winners and losers in their various trade negotiations. We would submit that in the U.S.-Canadian Trade Agreement agricultural producers in North Dakota are losers and would suffer grave damages.

It becomes very apparent when reviewing the document that the drafting committee looked at broad macroeconomic data and attempted to draw conclusions without looking specifically at North Dakota's economy.

As you can see from the enclosed graph summarizing the sources of wealth in North Dakota, agriculture and agricultural products account for 53% of the new wealth. However, the document does not address the major crops or livestock which are grown in North Dakota. For instance, durum wheat is not even mentioned once when assessing the impact on North Dakota of the implementation of the agreement.

The impact in North Dakota of durum trade with Canada is not felt in the amount of durum which crosses directly between North Dakota and the Canadian provinces via their common border. The impact is felt on overall market prices which are influenced by the amount of Canadian durum sold to domestic millers via Thunder Bay. Thunder Bay, at this point, enjoys an average of $17 per ton or 50 cents per bushel rail freight subsidy, which is left intact by the current agreement. To ignore such an obvious discrepancy seriously flaws the conclusions of the commerce department's document.

The impacts of opening the border to Canadian hydroelectric energy and coal-produced energy are not addressed except to state that the consumers would benefit from lower prices. While the consumer may benefit from short term lower prices, the serious damage done to North Dakota's coal-fired electrical generating industry would very quickly make our U.S. consumers dependent on Canadian sources for their power needs. This could prove to be a tenuous situation should the Canadians suffer a short-fall and cut off U.S. power to service their own domestic requirements.

Throughout the document, the commerce department fails to address the impacts on the state in regard to its unique producer-heavy, consumer-light economy. The North Dakota trade winners, which are outlined in the document, such as increased exports in motor vehicles, wheel tractors, soil preparations, fertilizers, agricultural equipment, etc. are mainly pass through items. The amount of actual machinery and motor vehicle manufacturing within the borders of North Dakota is very limited. Any economic advantage or increased traffic in many of the areas cited would be advantageous to other states which are centers for the manufacturing of the items. We see North Dakota only as a conduit and gateway for these products to be transferred from their manufacturing point to Canada.

In the area of service industries, while there would be some minor positives felt in North Dakota, the rest of the country certainly would gain much more in the areas of service and financial access to Canada.

Fertilizer is mentioned as one plus to North Dakota farmers. North Dakota historically has not used potash fertilizer which the Canadians are very rich in.

The study concludes that a major benefit of the Free Trade Agreement would be the continuation of the duty-free status in fertilizer trade. To say that North Dakotans will have won by trading away many of their protections in the areas of grains and livestock by retaining a current status causes us to question the negotiating ability of our representatives at the commerce department.

While it is not discussed in any great length in this document, the impacts both in the electrical energy and production of coal and petroleum in North Dakota would be generally negative should this agreement be adopted. Lignite coal is a very site-specific commodity, and most North Dakota lignite is used at the mine mouth to produce electric energy. A flood of cheap Canadian power would surely wreak economic havoc on an already vulnerable fuel source.

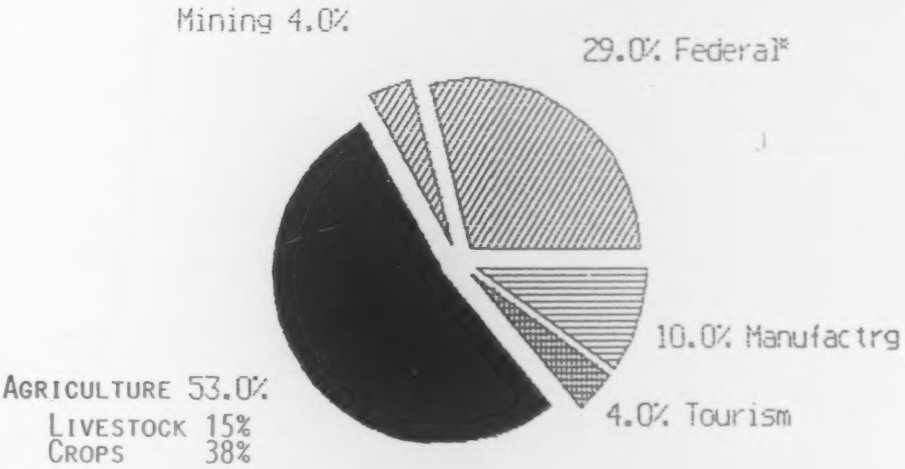
The general statistical profile of North Dakota on page five does little to enlighten us as to gains or losses should this agreement be adopted.

One interesting list seen on page six, is the major commodity trade with Canada. It states that North Dakota exports $15 million of new wheel tractors, presumably the Steiger plant model, and imports no wheel tractors from Canada. We question that analysis on the basis of the Canadian plant just north of our border which produces the Versatile tractor. The Versatile tractor, which is comparable in horsepower and performance to tractors manufactured in the U.S., has enjoyed a price advantage in the past due to the lesser environmental standards in Canada and an extremely favorable exchange rate. North Dakota farmers have long lamented the necessity to buy foreign tractors because of the price advantages afforded that item due only to a difference in currency values.

The bottom of the cover page of this study states that the data is aggregate national data and should not be applied to microeconomic levels. We feel that the conclusions drawn by this study and applied to North Dakota must be viewed at the microeconomic level. The potential harm to the state of North Dakota from the enactment of this agreement will certainly be felt at the most microeconomic level--the pocketbooks of the producers and consumers in the state of North Dakota. Should the state lose a major portion of its durum markets, for instance, more agricultural producers would conceivably be forced out of farming, and we find that a very serious microeconomic impact. As we lose producers, we lose wage earners; and as we lose wage earners in North Dakota, we lose consumers. We would submit to you that the lower prices for some consumer imports from Canada, while attractive to the rest of the nation would not offset the damage done to North Dakota's economy by the enactment of the U.S.-Canadian Free Trade Agreement. We again urge that the document not be ratified.

Respectfully submitted,
NORTH DAKOTA FARMERS UNION
Alan Bergman
Alan Bergman, President

THE STATE OF NORTH DAKOTA
WEALTH: 25 Year Summary of Sources



* INCLUDES CONSTRUCTION AND PAYROLLS

Chairman **Gibbons**. Fine. Now, we have three statements, gentlemen, for the record, and without objection, we will admit them at this time. We have the North Dakota Grain Dealers Association, the North Dakota AFL-CIO, and the Potato Council.

Without objection, those statements will be included in the record.

And, now, last but certainly not least, the last panel are the Basin Electric Power Cooperative and the Northern States Power Co.

Mr. McPhail and Mr. Benkusky.

Mr. **Dorgan**. I do not see Mr. McPhail in the room.

Chairman **Gibbons**. Well, let us—we will accept his statement. Maybe he is already snowed in somewhere.

Go right ahead.

STATEMENT OF ANTHONY W. BENKUSKY, VICE PRESIDENT, TRANSMISSION AND INTER-UTILITY SERVICES, NORTHERN STATES POWER CO.

Mr. **Benkusky**. Good afternoon, gentlemen.

Mr. Chairman and the subcommittee members, certainly I want to thank you for scheduling the meeting in Fargo. I lived here about 20 years ago and have visited on and off, and it certainly amazes me to see how this city has grown in that period of time.

I am Tony Benkusky, vice president of transmission and Inter Utilities Services, for Northern States Power Co. and my area involves energy supply planning, transmission planning, system operations as well as power purchases from other power suppliers as well as power sales to them, including our neighbors to the north, Manitoba Hydro.

You have copies of my testimony and if it is agreeable to you, Mr. Chairman, I would like that introduced into the record.

Chairman **Gibbons**. Yes. We will put it in its entirety.

Mr. **Benkusky**. And what I would like to do is to briefly summarize what is in my testimony.

First of all, I would like to state that because of the benefits that have accrued to Northern States electrical consumers, we are in favor of the free trade agreement, especially with respect to no tariffs on imported energy.

The main reason is because of the benefits that have accrued to the electrical customer, and I will summarize those benefits.

Chairman **Gibbons**. All right.

Mr. **Benkusky**. But before I do that, I think it would be well to acquaint you with Northern States Power Co.

We are an electric and gas utility in the Midwest here. We serve the major cities in North Dakota and in South Dakota, extending through the home of the World Series Champions, in the Twin Cities, and extending on to the east of Eau Claire, Wis., and up to northern Michigan.

We have available to us year-ending 1987 generating resources totalling about 7,500 megawatts, and last year, we supplied an energy requirement, this would be our total system requirement, of 31 million megawatt hours.

Of that amount of energy, we supplied roughly 50 percent of it by coal generation and another 35 percent by nuclear, about 5 percent by our own hydro as well as some power purchases. The remaining 10 percent came from Manitoba Hydro.

One of the things we pride ourselves on is that we are a low-cost electric power producer here in the Midwest. In fact, we rank with the 25 percent quartile of low-cost producers in the United States. This is because of the good diversity of resources and mix of coal, nuclear, hydro facilities and hydro purchases.

We have been working with Manitoba Hydro for over 20 years on arrangements for purchase of power. In 1970, we made our first interconnection with them. In fact, it was the first line with Manitoba Hydro. We made that with two other utilities, Minnkota Power Cooperatives, which is located in the Grand Forks, North Dakota area, and Ottertail Power Co., which serves North Dakota and Western Minnesota. We have saved several million dollars with that particular inter-connection.

When we got done with the first interconnection, we started negotiating on what could further be done, and in 1975, we entered into an arrangement whereby we constructed a 500 KV transmission line from the Twin Cities up to the Canadian border. Manitoba Hydro then constructed it from the border on up to Winnipeg. The total distance is about 500 miles.

On that particular arrangement, we then, beginning in 1980, contracted for three types of power purchases. The first one was diversity. The second was the peaking power, and the third one was excess hydro generation that they have on this tremendous hydro resource, the Nelson River.

The diversity arrangement was a natural one for us because Manitoba Hydro in Winnipeg, is a winter peaking system, and NSP is a summer peaking system. So, we arranged for a 300 megawatt exchange if needed in the summertime. We have agreed we will give them back 300 megawatts in the winter time if they need it.

And there is no, and I repeat, no capacity charge for that exchange. So, here is a natural utilization of the generating resources on a hydro system and on a thermal system.

The second purchase arrangement was peaking power, and that amounted to 200 megawatts and that is priced very competitively. That cost is $12 per kilowatt season, and it amounts to 200 megawatts. What that does then is allow us to use that power for the sharp peak that we get in the summer time.

And, then, the last item was this matter of excess hydro. We negotiated with them to sell us, at an economy exchange price, 1.5 million megawatt hours per year for the next 13 years.

Now, the total of all that is about 500 megawatts of capacity and over 2 million megawatt hours per year. That is like a base loaded unit, and, it allowed us to defer a unit for 13 years.

What are the savings resulting from those transactions? Well, with respect to the energy savings, we have calculated it amounted to about $24 million per year. So, for the previous 8 years, we have saved a little under $200 million.

Chairman Gibbons. In fuel cost alone?

Mr. Benkusky. In our energy costs, and this went to the customers.

I mentioned that it deferred a base loaded unit. If we take the price of a base load unit at that time in 1980 and we estimate it as being conservatively about $250 million, subtract the price of the transmission line—$110 million, that leaves a savings of roughly a $150 million, which, on an annual basis, amounts to a little less than $20 million per year.

In 1984, knowing that our agreement with them was going to end in 1993, we entered into further negotiation for purchase from Manitoba Hydro, and thus, we bought participation power for 500 megawatts for a period of 12 years beginning in 1993.

We also arranged for a 200 megawatt peaking purchase from them for 1993 to 1996. Then, beyond 1997, for the next 20 years, we are back again to this diversity arrangement of 200 megawatts whereby they use it in the winter time, we use it in the summer time.

I think to give you some idea of the impact on the NSP consumer, had we purchased roughly 3 to 4 million megawatt hours per year, which is what we have averaged, and if a tariff, say of 1 mill per kilowatt hour, which is one-tenth of a cent per kilowatt hour, had been assessed, the consumer would have paid an additional $3 to $4 million per year.

I should also mention that we are not foregoing domestic sources in this region. As I mentioned to you, about 50 percent of our power is generated by coal-fired generation. What is that in terms of tons? That is about 9 millions tons per year which we are consuming here to supply the electricity for people in this region.

I think one of the main features of the fact that we have deferred units is that right now, we are embarking on engineering studies to come up with new answers for both construction as well as manufacturing of power plants. The result of this is that we think we can construct a plant today cheaper than we could have in 1985 or 1986.

I think the whole point of our message right now is that with the availability of imported electricity, this has allowed us to minimize the cost to the consumer, and has provided a target goal for our coal producers.

I think there were two questions raised while I was out in the audience which I would like to address. One is this matter of dependency on a foreign government for power supply.

I think you recognize that in planning a power system, you certainly have to look at the reliability of all of your resources, and in our particular case, we see that our purchases from Manitoba Hydro really do not exceed what is our largest unit on Northern States system. We just installed an 800 megawatt unit on our system.

So, if something happened to that unit, we have to then pick up additional power supply within the pool we belong to, the Mid-Continent Area Power Pool. The same thing holds true with respect to power from Manitoba Hydro. If that transmission line goes out, we then have to rely on the reserves that we have in the pool. My point is that we certainly have to look at the aspect of reliability, so that we will not exceed our bounds of what we think is prudent from a reliability standpoint.

Second, with respect to our present arrangement, there is a mutuality of advantages. I mentioned the diversity. If they should cut us off, that means Manitoba Hydro would not get the 300 megawatts in the winter time. Likewise, we would not get it in the summer time. My point being that there is a mutual interest as far as power deliveries are concerned.

There was one other point. I believe it was Mr. Bergman who commented on the building of facilities in the United States versus imports from Canada. My son is a plumber, and when I was involved with the negotiations with Canada for a 1984 power purchase, and I was mentioning to him that we were talking about building a 500 megawatt unit versus a 500 megawatt purchase from Canada in 1993, he expressed to me his concern of jobs for plumbers, pipe fitters and others if we chose the alternate to building a plant.

And, so, it was a very personal thing as far as I was concerned when I looked at the numbers and the pluses and minuses. My point is that NSP felt that this deal had to be sufficiently attractive to certainly overcome that feature of not building and providing jobs here in the United States. I think the savings are significant as far as our negotiations with the Canadian system are concerned.

I think there are other advantages, of course. In our particular case with Manitoba Hydro, it involves a natural resource. It is falling water, that we are utilizing there.

That completes my remarks, Mr. Chairman.

[Statement of Mr. Benkusky follows:]

Testimony before the House Subcommittee on Trade

# of the Committee on Ways and Means

March 11, 1988
Fargo, North Dakota

Mr. Chairman and members of the Subcommittee:

I appreciate the opportunity to present testimony on behalf of Northern States Power Company (NSP) on the subject of free trade for imported electric energy from Canada because of its importance to customers of NSP.

My name is Anthony Benkusky, Vice President Transmission and Inter-Utility Services for NSP. My area of responsibility includes energy supply planning transmission and substation planning, engineering and construction, system operation. Also included are coordination and arrangements for power purchases and sales with other power suppliers such as the Canadian utility, Manitoba Hydro Electric Board.

I would like to make NSP's position clear up front that we support the proposed trade agreement provision for free trade of imported electricity. We oppose proposals to assess import tariffs because: 1) it will cost NSP's customers significantly; 2) we do not see any benefits accruing to our customers due to the application of this tariff in the near-term or the long-term; and 3) in the long-term, the cost of electricity to our customers will increase by more than the import tariff due to reduced competition and incentive for the U.S. coal industry.

Today, I would like to address the committee on four items:

1) The characteristics of NSP's various transactions with Canada;

2) The savings NSP's customers have accrued due to these transactions;

3) The cost burden of an import tariff on NSP customers; and

4) The need for the federal government to encourage competition among various energy sources rather than discourage it.

Before I address these four items, I would like to familiarize you with NSP.

NSP is a medium-sized electric utility which supplies electricity to over one million customers directly through its electric distribution activities in a five-state area stretching from North and South Dakota on the west to the Upper Peninsula of Michigan on the east. We supply a large percentage of the towns and cities that provide the majority of the employment in this area. We are the largest utility in the Upper Midwest, serving an estimated 3.1 million people. NSP is one of the lowest cost power suppliers in the United States. We have achieved this low-cost electricity provider status by blending a diverse set of generation resources into an efficient production system. This system includes an extensive transmission network which interconnects NSP with most of the power suppliers in the Upper Midwest area. In addition, we are interconnected with utilities operating in eastern Wisconsin, Missouri, Kansas, and with our Canadian neighbors.

Our available generating resources in 1987 were 7500 MW, from which we supplied 31 million MWh of energy for the year. NSP relies on coal, nuclear, and hydro energy production from domestic resources as well as hydro energy from Canada to meet the energy requirements of our customers. Approximately half of NSP's energy came from coal. Nuclear power provided 35% while domestic and Canadian hydro sources averaged about 5% and 10%, respectively.

NSP's relationship with Manitoba Hydro spans more than 20 years. The first interconnection between the U.S. and Canada in this part of the country was completed in 1970. NSP participated in this 230,000 volt interconnection with two other U.S. utilities, Minnkota Power Cooperative and Otter Tail Power Company; it inter-connected our systems in Fargo, North Dakota with Manitoba Hydro's main system in the Winnipeg metropolitan area. This interconnection allowed us to begin purchasing surplus energy from Canada at rates that saved NSP's customers millions of dollars.

During the mid 1970s, NSP and Manitoba Hydro agreed to participate in another interconnection to directly connect the Winnipeg and Minneapolis/St Paul metropolitan areas. Along with the construction of this 500,000 volt interconnection, NSP and Manitoba Hydro agreed to a number of power and energy transactions. Primarily, three types of transactions were involved: a diversity exchange, a peaking power purchase and a surplus energy purchase.

To understand the value of these transactions, let me briefly describe each of them:

> A diversity exchange is an agreement whereby a winter peaking utility, such as Manitoba Hydro, provides generating capacity to a summer peaking utility, such as NSP, during the summer season. The summer peaking utility will reciprocate by providing an equivalent amount of capacity during the winter season to the winter peaking utility. No capacity charge is involved in this firm power transaction due to the reciprocity. A small commitment of energy is associated with this transaction, and it is priced cheaper than NSP's existing peaking energy options.

NSP and Manitoba Hydro agreed to exchange 300 MW starting in 1980, when the interconnection was completed, for a term of 13 years.

> A peaking power purchase, in our case, is a seasonal transaction, whereby, Manitoba Hydro provides NSP capacity during the summer season. This firm power transaction requires NSP to pay a nominal capacity charge, $12/kW/yr, for the right to use the capacity to meet peak load requirements. This transaction also involves only a small commitment of energy and is priced in the same manner as the diversity energy.

NSP purchased from Manitoba Hydro 200 MW of peaking power beginning in 1980 and extending until 1992.

> Along with the firm power commitments, Manitoba Hydro agreed to provide NSP with 19.5 million MWhrs of surplus energy over the 13-year contract period--roughly 1.5 million MWhrs of surplus energy annually. This energy can be interrupted, and therefore, its price reflects its non-firm nature.

These three transactions combined guaranteed NSP approximately 500 MW and 2 million MWhrs of Canadian hydro electric energy per year at competitive rates. As a package, these transactions provide NSP the equivalent of a base load unit.

The two transmission interconnections provide NSP with approximately 1100 MW of firm power transfer capability from Canada. This allows NSP to take advantage of other energy surpluses Manitoba Hydro has available. Since 1980, NSP annually has purchased over 1 million MWh more than the contract commitments.

Have these arrangements with Canada provided any tangible benefits? Unequivocably, yes.

The savings accrued to NSP's customers have come about through: 1) the energy purchases from Canada displacing higher cost generation; and 2) the firm capacity commitments from Canada deferring the need to build higher cost generating plants.

Since 1980, NSP has purchased over 25 million MWhrs from Canada under the various types of transactions established providing approximately 10% of NSP's total energy requirements. This has saved our customers approximately $190 million ($24 million per year) in just lower fuel costs. The firm capacity commitments enabled NSP to defer, at a minimum, $250 million in generation construction costs offset partially by the $110 million investment in the transmission interconnection. The ability for NSP to have deferred building generation in the early 1980s by building this transmission interconnection has conservatively saved our customers an additional $150 million in this eight-year period. We believe this level of savings will continue through the term of the contract. Our experience to date has proven that properly constructed transactions with Canada are extremely beneficial. Our expectations have been met fully.

To maximize our investment in our transmission interconnections with Canada, NSP has made contract arrangements with Manitoba Hydro that will begin in the early 1990s after the expiration of our existing arrangements and continue beyond the year 2000. This has included the extension of the 200 MW peaking power arrangement with Manitoba Hydro through 1996, where it then converts to a diversity arrangement for 20 more years. Along with this, NSP has agreed to buy participation power for a 12-year period beginning in 1993. This participation power purchase is equivalent to NSP purchasing a 500 MW base-load unit. This transaction is priced at a 20% discount from NSP's lowest cost coal alternative and includes an adjustment factor to reflect the difference in the life of a plant (35 years) and the purchase contract term.

The ability for NSP to purchase power from Canada enabled NSP to defer construction at a considerable savings to our ratepayers. In addition, it enabled us to spend the time necessary to explore and develop new coal-fired technologies and coal plant construction techniques that will enable us to build the next vintage coal-fired plants at costs considerably less than current conventional practices and technologies would allow and meet more stringent environmental standards. This is important if NSP is to continue to rely on coal-fired generation for the bulk of its energy requirements.

The proposal to apply a tariff on imports of energy from Canada will substantially reduce the savings NSP expects to obtain through its existing contracts resulting in direct increases in the cost of electricity to NSP's customers. For example, if a one mill per kilowatt hour tariff had existed since 1980, NSP's customers would have had to pay over $25 million more for energy. This would have reduced the energy savings of our imports from Canada by over 13%.

NSP expects to continue to import 3 to 4 million MWhrs per year from Canada; therefore, for every one mill per kilowatt hour tariff applied to imported energy, NSP customers would be paying 3 million to 4 million dollars more annually for the same electric service and reliability.

I have described earlier NSP's diverse mix of energy resources. The reason I did so was to point out that utilities like NSP that import from Canada are not looking to forego domestic power sources. NSP is a major coal consumer in the region and in the United States. We use over 9 million tons of various types of coal in our power plants in addition to purchasing substantial amounts of additional energy from other coal-fired facilities in the region. Our coal use alone amounts to 8.5% of all of the coal shipped in the West North Central region and 1.0% of all coal shipped in the United States.

It is in our own best interest to have a viable, competitive coal industry. We see that as coming about only if there are alternatives to coal that are not foreclosed or priced out of consideration. NSP's experience has shown that a diverse mix of resources provides the production cost stability, supply reliability and the encouragement of competition among alternative energy sources needed to produce lower costs.

It is in this context that we at NSP believe an import tariff will do nothing more than increase the cost of electricity to our customers. This increase will come not only from the direct impact of a tariff but also indirectly from higher costs of domestic sources due to the tariff taking away incentives for domestic sources of energy to be more cost competitive.

I don't think it is surprising that, faced with stiff competition, industries become more competitive. In the Upper Midwest in recent years, we have seen the impact of railroad competition in the Powder River Basin of Wyoming substantially lowering delivered costs of fuel. Here in North Dakota, the lignite industry now recognizes it needs to react to the more competitive western coals if it is to continue to be a viable industry. This competitive pressure within the lignite and western coal industries, I believe, is due partly to electric utilities in this region having other options, such as importing electricity from Canada. The beneficiary of this competition is the electricity consumer.

In summary, NSP has utilized the option of importing capacity and energy from Canada to provide significant savings to our customers. We have done this utilizing a variety of transactions with Canada in an effort to maximize the savings to our customers. Hydroelectric-based resources from Canada balance out NSP's mix of energy resources providing stability, reliability and low cost for our customers. Any tariff on the importation of electricity from Canada would discourage the use of available, renewable resources on the North American continent; significantly increase the cost of electricity to NSP's customers; and ultimately hurt the economies of our service territory.

Chairman GIBBONS. Thank you very much.

I am informed by staff that the free trade arrangement gives us energy security during shortages. If the Canadians cut back, they must continue to give us our proportional share based on historic trends, both domestic supplies as well as exports would be affected during times of shortages.

So, it looks like we have probably got as much, and as you say, when you purchase from them, you have to take that into consideration as far as your reliability factor is concerned.

Mr. BENKUSKY. Yes.

Chairman GIBBONS. So, you do try to offset your enthusiasm for purchasing cheaper power, cheaper than you can generate it yourself, by whatever factor you factor in for reliability in your own system.

Mr. BENKUSKY. That is correct, Mr. Chairman.

Chairman GIBBONS. I think I understand that. You know, in looking over this arrangement, if we only had in here the tariff reductions on the goods that were—going into Canada and we only had in this agreement the energy provisions, we would have an excellent agreement.

It is unfortunate that in the dealings of man, you cannot do everything at one time and do them as well as we did the tariffs and the energy requirements, but for those reasons alone, this is an excellent agreement.

Now, we have heard here today some serious criticisms of the agricultural part of it. We are going to examine that more thoroughly, studying the record, and see if we can get adjustments made or understand the agreement better and the whole process.

Mr. Pease, do you want to add anything?

Mr. PEASE. Just one thing, Mr. Chairman.

I appreciated the testimony, Mr. Benkusky. One question.

You say that you support the agreement. Then, you expressed considerable concern about any import tariff that would raise the cost of electricity.

Are you supporting the agreement because it would not permit an import tariff?

Mr. BENKUSKY. Maybe I did not make myself clear there, Congressman Pease, but at the present time, we do not have a tariff on imported energy from Canada. The present trade agreement also calls for no tariffs on imported energy, and what I was really trying to illustrate is that there are some people that have indicated they would like to see a tariff, and I did not make that clear.

Thank you very much for pointing that out to me.

Mr. PEASE. Thank you, sir.

Chairman GIBBONS. Mr. Dorgan?

Mr. DORGAN. Mr. Benkusky, what percent of the energy that you import from Canada comes from hydro sources?

Mr. BENKUSKY. I would say that it is 100 percent from hydro sources. Manitoba Hydro has a 200 megawatt fossil plant located near Winnipeg, but that plant is very, very seldom run. So, it is all hydro facilities, yes.

Mr. DORGAN. The import of electricity from Canada coming from coal-fired generating plans is largely on the east coast, is that true?

Mr. **Benkusky**. I would say that possibly Ontario Hydro is the one with some fossil plants. I know that there is nuclear plants there, and, of course, with Hydro Quebec, that is mainly hydro there, and, incidentally, if you do not mind, I could add one more thought with respect to the comments on the interruption last January by Hydro Quebec to the people or to the consumers in New England.

In that particular case, there was an unusual combination of circumstances of outage of units on Hydro Quebec's system, and what they did is both parties came to a mutual agreement that rather than, say, curtailing load on Hydro Quebec's system, they came to an agreement that they would terminate those deliveries and they were able to pick it up without any blackouts.

Mr. **Dorgan**. Well, your statement is a good addition to the hearing record. Obviously, this area contains some element of controversy. The Governor alluded to this in his testimony, and I—unfortunately, we cannot take the time now to go into that. I have got to go to Grand Forks and I know that the other committee members are going back to Washington.

But this is a useful perspective for us and the hearing record that will be published will now have two different perspectives on this issue, and we appreciate you and your company's willingness to be here today.

Chairman **Gibbons**. Mr. Johnson?

Mr. **Johnson**. I do not have any questions. I just want to commend everyone who participated in the hearing today. It has been a very useful exercise, very constructive, and I feel I have a much better perspective on the issue having heard the North Dakota perspective.

Chairman **Gibbons**. I think that is a good note on which to conclude these hearings.

Let me thank the people here at the Radisson Hotel for their fine facilities and their excellent cooperation.

Let me thank Frank Phifer of our staff for the arrangements and Colonel Hay and all of the people who attended, particularly you members of Congress. I know how busy your time schedules are.

I want to say to the people of North Dakota, this has been a good experience for all of us. I have learned a lot, and I will be able to examine this agreement in a more intelligent manner from what I have learned here today.

So, thank all of you for coming. The record will stay open until March 18, and you may send additional statements to Washington.

Without objection, Mr. McPhail's statement will appear in the record as it was delivered to the committee.

The meeting is adjourned. Thank you.

[Whereupon, at 1:25 p.m., the subcommittee was adjourned.]

[Upon conclusion of this day's hearing, Chairman Gibbons requested Ms. Veneman, of the U.S. Department of Agriculture, to respond to concerns as expressed by witnesses. The following was subsequently received:]

U.S. DEPARTMENT OF AGRICULTURE

CONCERNS AND USDA REBUTTALS

House Ways and Means Committee Hearing
Fargo, North Dakota

March 25, 1988

Following are responses to the various concerns and issues regarding the U.S./Canada Free Trade Agreement raised at the March 11, 1983 hearing.

Canadian Wheat Board Licenses

Concerns:

-- U.S. producers will not be able to sell to Canada because of required import licenses which the GOC will not grant.

-- Canadian import licenses will remain in place for some time.

-- It is unlikely that U.S. support levels will ever be viewed as equal using the level of government support calculations.

-- Will the Administration reduce U.S. price support levels for grain by one-half purely to eliminate licenses on Canadian grains?

Response:

Canada has agreed to eliminate import licenses for U.S. wheat, barley, oats and their products when U.S. government support for the particular grain is equal to or less than that of Canada. Each country will calculate its own support level in accordance with a methodology set forth in the FTA. There is a mechanism to resolve any disagreement over the other country's calculation. Based on preliminary estimates, Canadian import licenses for oats would probably be subject to removal when and if the FTA is implemented. These estimates also indicate that U.S. subsidies on barley and wheat are greater than those of Canada at this time.

While the formula for determining each country's level of government support was based upon the producer subsidy equivalent (PSE) methodology that was developed by the OECD, the formula was tailored to take account of specific aspects of the Canadian and U.S. farm support programs.

There is no provision in the FTA which limits Congress' ability to legislate changes in domestic support programs. Of course, those programs would need to be consistent with the other provisions of the Agreement regarding such matters as import duties and export subsidies. Future decisions regarding U.S. domestic farm programs will continue to be based on numerous factors and are unlikely to be made solely for the purpose of removing Canadian import licenses.

Western Grain Transportation Act

Concern:

- Canada is allowed to maintain its Western Grain Transportation Act (WGTA) subsidies on exports through eastern ports. This is a meaningless concession as Canadian wheat has never entered the United States through western ports in sizable quantities. Wheat farmers are being asked to relinquish domestic markets to Canadian farmers; not on the basis of a superior product at competitive prices determined by the marketplace, but because the use of transportation subsidies still provided for in the Agreement.
- The WGTA subsidies on shipments through the east are "grandfathered" by the FTA.

Response:

The FTA would prohibit either Canada or the United States from using export subsidies on shipments of agricultural goods to each other. Canada, pursuant to the FTA, has agreed to exclude from the transport rates established under the Western Grain Transportation Act (WGTA), agricultural goods originating in Canada and shipped via west coast ports for consumption in the United States. These subsidies on shipments to the United States were instituted by Canada in 1984 as an expansion of the Crow's Nest Act (which was replaced by the WGTA) and are clearly export subsidies because they are only available for goods that are exported from Canada. Conversely, the WGTA subsidies for eastern ports are domestic subsidies because they are not conditioned on the exportation of the products from Canada.

The FTA did not address domestic subsidies, such as the WGTA for eastern ports, because both countries agreed that the question of domestic subsidies could only be effectively addressed in multilateral negotiations such as the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT).

The FTA did not "grandfather" the WGTA subsidies on shipments through the east. We have retained our right to utilize countervailing duty law to address these and other subsidies. Trade distorting agricultural subsidies will also be addressed on a multilateral basis in the Uruguay Round.

Section 22

Concerns:

- -- If Section 22 provisions are eliminated under the Agreement, what mechanism can be used to protect the U.S. growers?
- -- Canada has gained unimpeded access to the U.S. market.
- -- Section 22 is immediately weakened by the FTA.

Response:

Both countries have reserved the right to impose or reimpose import restrictions consistent with their international obligations on wheat, barley, other feed grains and their products if imports increase significantly as a result of a substantial change in either country's support programs for that grain. The United States has not had any import restrictions on wheat or wheat products since 1974.

The U.S. right to use Section 22 in all other areas remains unchanged except for the agreement not to put import restrictions on sugar-containing products with ten percent or less sugar for the purposes of restricting the sugar content of those products. This provision will not limit the ability of the United States to restrict the entry of processed products with higher than ten percent sugar content for purposes of protecting the sugar program, and represents no change in the present import restrictions on sugar-containing products. Both countries retain their rights and obligations under the General Agreement on Tariffs and Trade (GATT).

Note: Section 22 is not designed to protect U.S. growers - it only protects USDA price support and stabilization programs.

Dumping by the Canadian Wheat Board

Concerns:

- -- The Canadian Wheat Board (CWB) is preparing to dump massive quantities into the large U.S. domestic market, taking advantage of its ability to pool sales and undercut U.S. domestic prices while the U.S. producer becomes a residual seller.
- -- Can the CWB use its dual-pricing system to dump into the United States?
- -- Under the FTA, the CWB has much greater control over the amount of wheat flowing in the United States.

Response:

The United States and Canada have agreed that neither government, including any public entity it establishes or maintains, shall sell agricultural goods to the other country at below the acquisition price of the goods plus any storage, handling or other costs incurred by it with respect to those goods. This provision will prevent the CWB from selling products into the United States below cost. Therefore, the CWB cannot use its dual-pricing system to dump into the United States. As a result, the FTA provision described above actually serves to limit the CWB's current ability to ship wheat to the United States. Both countries have also retained the right to impose or re-impose import restrictions consistent with their international obligations on particular grains, including wheat, barley and oats, if imports increase significantly as a result of a substantial change in either country's support programs. Also, under the FTA, U.S. producers will still have access to the U.S. countervailing andantidumping duty laws.

Export Enhancement Program

Concerns:

- Will the United States be prohibited from using the Export Enhancement Program (EEP) against Canada?
- Can Canadian barley move into U.S. export channels and receive EEP?

Response:

The United States and Canada have agreed not to use export subsidies on agricultural goods exported directly or indirectly to the other country. This will prohibit the use of direct export subsidy programs such as the EEP on sales of agricultural products to Canada. It is very unlikely that we would have used the EEP on sales to Canada in any event.

The use of the EEP on sales to third countries will not be affected by the FTA. The FTA does not require prior consultations on the EEP with Canada. Our EEP will continue to be conducted as it has in the past, taking into consideration other supplying countries' markets. All commodities under the EEP must be of U.S. origin.

Shipments of Canadian Barley to the United States

Concern:

- Canada has been increasing production and shipments of durum wheat to the United States while we have cut production as part of our domestic farm legislation.

Response:

Any time bordering countries, like the United States and Canada, produce similar products, some border trade is normal. In recent years modest amounts of Canadian durum and barley have been purchased each year by the U.S. domestic sector. Periodic shortfalls in U.S. production or short-term tightness in U.S. market supplies have resulted in imports of grain from Canada because U.S. producers have made heavy use of loan programs. In addition, in some regions of the United States, particularly in the East, Canadian grain supplies are often more readily accessible than U.S. supplies.

Meat Import Act

Concerns:

-- Will all trade in meat between the United States and Canada be exempt from the U.S. Meat Import Acts of 1964 and 1979?

-- Under what circumstances can quotas be re-instated?

-- U.S. quotas on live animals and meat products will be removed.

Response:

As a result of the FTA, the United States and Canada will not introduce, maintain or seek any quantitative import restriction or any other measure having equivalent effect on meat goods originating in the other country, unless those imports are frustrating the importing country's actions on meat imports from third countries and the exporting country has failed to take equivalent action. Therefore, if the United States takes action against meat imports from third countries, and Canada does not take action to prevent the frustration of our action, the United States may impose quantitative restrictions on Canada.

The exclusion of Canada from the Meat Import Act of 1979 will not allow transshipments from third countries to circumvent that Act. The Agreement's rules of origin specifically require meat transshipped from third countries to undergo transformation in Canada sufficient to result in a change in the product's classification from one Harmonized System chapter to another in order to be considered a product of Canada.

The United States has no standing quotas on meat or live animals. The U.S. Meat Import Act of 1979 allows the United States to place import quotas on certain types of meat only when required conditions are met. The U.S. Meat Import Act of 1979 does not limit the importation of live animals.

Horticultural Non-tariff barriers

Concern:

-- Why did the FTA not address Canadian bulk shipment and container barriers to trade in potatoes?

Response:

This issue was addressed and discussed extensively. However, the Canadian quid pro quo was too high and therefore no resolution was achieved.

Alcoholic beverages

Concern:

-- Why is U.S. beer still restricted in the Canadian market while Canadian beer gains barrier-free entry into U.S. markets?

Response:

Access to each other's beer market was unchanged by the FTA. We maintained our rights under the GATT which will allow us to address Canadian beer policies in that forum. The FTA also provides that any new Canadian policies affecting beer cannot discriminate between Canadian and U.S. products.

Sugar

Concerns:

-- Will the sugar provisions of the FTA encourage U.S. sugar users to move to Canada and use world price sugar to undermine the U.S. sugar program?

-- Will the FTA allow the import of sugar from Cuba, South Africa and Nicaragua to enter the country, thereby circumventing U.S. law?

-- "The only benefit from this agreement is for Canadian offshore refiners and Canadian sweetener manufacturers."

Response:

The United States agreed not to impose import restrictions on products from Canada containing ten percent or less sugar for purposes of restricting the sugar content of these products. This provision represents no change in the present quota restrictions and reflects the assessment of the Department of Agriculture in testimony before the International Trade Commission in June, 1985 pertaining to the investigation of the emergency Section 22 import quotas established for certain sugar-containing products. In that investigation, it was shown that at the 10% sugar content level, the incentive to import a product solely to gain the windfall from the sugar contained in the product disappears due to the fact that the low sugar content coupled with transportation costs bring the windfall down to zero. For this reason, foreign manufactured products with below ten percent of sugar content have no price advantage over comparable U.S. domestic manufactured products. In short, imported products containing below this level of sugar content do not a have the potential to interfere with our domestic sugar price support operations.

This provision will not limit the ability of the United States to restrict the entry of processed products with higher than ten percent sugar content for purposes of protecting the sugar program. It will also not affect our prohibition on sugar or sugar products from Cuba, South Africa and Nicaragua.

Technical Regulations and Standards

Concerns:

-- How effectively will the FTA address health restrictions, labeling requirements and import standards?

-- Canadian producers face fewer pesticide restrictions than U.S. producers.

Response:

Many of the agricultural provisions in the FTA regarding technical regulations and standards will require further implementation and negotiations. Pesticides and labeling, for example, will be specifically addressed in bilateral working groups established at the technical level. These working groups will report to a joint monitoring committee, whose membership will be at the administrative level and will report progress of the working groups to appropriate Cabinet-level officials.

USDA technicians currently interact informally with their Agriculture Canada counterparts on these issues. Such interaction, however, will be strengthened through the formal organization and administrative review process of the FTA. Also, other USG agencies, especially the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA), will benefit from and be involved in such bilateral working groups.

The United States has approved more pesticides for use on agricultural commodities than has Canada. For example, the U.S. has a total of 71 pesticide active ingredients registered for use on wheat while Canada has 47. Of the 47 registered for this use in Canada, only 29 are also registered for wheat or cereal grains use in the United States. Also, of the 71 pesticides registered in the United States, 42 of these have no Canadian registration.

Third country circumvention

Concern:

-- How will third countries be prevented from shipping through Canada into the United States and taking advantage of the reduced FTA tariffs?

Response:

The FTA has established "Rules of Origin" which will prevent transshipment by third countries purely to take advantage of the reduced tariffs between the United States and Canada. The Rules of Origin are stated in terms of changes in Harmonized System tariff classification. Goods that contain third-country materials must be substantially processed in one or both of the countries to be eligible for the preferential tariffs. The processing required is such that the goods will be changed in ways that are physically and commercially significant.

Canadian supply management programs

Concern:

-- How will the Canadian supply management programs, such as those for poultry and eggs, be affected as a result of the FTA?

Response:

As a result of the FTA, Canada will increase the import quotas for poultry and eggs to levels which reflect total shipments over the last five years. This provision will increase the minimum allowable import levels into Canada. Since the quotas are based on a percentage, these levels will continue to expand in quantitative terms as production expands in Canada. The FTA tariff reduction on these products (over a ten-year period) will give U.S. exporters a competitive advantage over other potential supplying countries for the global quotas. Supplemental import permits will continue to be issued when Canada requires additional imports.

Also, the United States and Canada have agreed that neither government or public entity it establishes or maintains, shall sell agricultural goods to the other country at below acquisition price of the goods plus any storage, handling or other costs incurred by it with respect to those goods. To the extent that they are public entities, this provision will prevent Canadian marketing boards and supply management operations, such as the egg, turkey and chicken marketing agencies, from selling products into the United States below cost. The United States also retained its GATT rights and the right to use our countervailing and antidumping duty laws, which in some cases might be appropriate to address suspect supply management practices.

Canadian "end use" certificates for wheat, barley and oats

Concern:

-- Can Canada embargo U.S. wheat, barley and oats by not granting end use certificates?

Response:

Canada may require that imported grain be accompanied by an end-use certificate to ensure that the grain is imported for consumption in Canada and is consigned directly to a milling, manufacturing, brewing, distilling or other processing facility. The FTA specifically states that such end use certificates must be freely provided by the Canadian Grain Commission and therefore cannot be used as an import barrier.

Subsidies

Concern:

-- As far as calculating a level of government support, who determines what constitutes a subsidy? Are all programs listed in the "Level of Government Support for Wheat, Oats and Barley" section interpreted to be agricultural subsidies by the USG?

Response:

Canada has agreed to eliminate import licenses for U.S. wheat, barley, oats and their products when U.S. government support for the particular grain is equal to or less than that of Canada. The programs listed in the "Level of Government Support for Wheat, Oats and Barley" are cited to implement this provision. Each country will calculate its own support level in accordance with a methodology set forth in the Agreement. There is a mechanism to resolve any disagreement over the other country's calculation.

While the formula for determining each country's level of government support was based upon the producer subsidy equivalent (PSE) methodology that was developed by the OECD, the formula was tailored to take account of specific aspects of the Canadian and U.S. farm support programs. Both the U.S. and Canadian support levels include the major federal and state/provincial support programs. Canada's support level includes its dual pricing system. The U.S. support level is reduced by the income foregone as a result of the U.S. acreage reduction program. Canada's support level is reduced by the income foregone from land fallowed because of restrictive delivery quotas to the Canadian Wheat Board. The classification of support programs in Annex 705.4 of the FTA shall not be construed as a definition of agricultural subsidies.

UNITED STATES-CANADA FREE TRADE AGREEMENT

FRIDAY, MARCH 25, 1988

House of Representatives,
Committee on Ways and Means,
Subcommittee on Trade,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 1100, Longworth House Office Building, Hon. Sam M. Gibbons (chairman of the subcommittee) presiding.

Chairman Gibbons. Good morning, ladies and gentlemen, this is a hearing of the Trade Subcommittee of the Ways and Means Committee on the United States-Canadian Free Trade Agreement. It is one of a series of hearings we will have before we finally vote on this matter.

Today, we have a member of our committee, Mr. Byron Dorgan, the Member of Congress from North Dakota, here with us. I want to say before you start, Mr. Dorgan, that I learned a lot from a trip with you out to your State.

I want to say publicly, as I have told you privately, people out there were most hospitable from the time we arrived to the time we departed, and your staff and you made everything work just wonderfully well. The hotel was very nice, the food was excellent, the weather was passable and the testimony was good and thoughtful at the hearing.

So, perhaps we will have to have more hearings in different parts of the United States before this is over, but you set a good pace for all of us. Why don't you proceed with your testimony?

STATEMENT OF HON. BYRON L. DORGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA

Mr. Dorgan. Mr. Chairman, thank you very much.

Let me, if I might be so presumptuous to amend your statement to say the weather was extraordinary, the sun was shining while you were there, and no more than 4 hours later we had 10 inches of snow and 40-knot winds. We made a special effort. If you wish to vacation there in the winter at any time, we will be able to get accommodations for you.

I appreciate the subcommittee's willingness to come to North Dakota. I wanted to testify this morning to reiterate several points I think are important not just to North Dakotans, but to those agricultural producers in our region. These producers view the Canadian Free Trade Agreement through the eyes of someone who is going to be affected by it. They would like to ask us, as we proceed ahead in the implementing legislation, to see what we can do to soften some of the blows they see coming from this agreement.

Let me mention, if I might, four brief areas of concern. I am going to summarize and submit——

Chairman **Gibbons**. Without objection, at the end of your summary, your entire statement will be included in the record.

Mr. **Dorgan**. First, the conclusion of the United States-Canada Free Trade Agreement will leave in place subsidies on the east coast of Canada which are called Crow's Nest subsidies for grain positioned at Thunder Bay on Lake Superior.

That Canadian grain, for example, Durum wheat, would move east and come into an American pasta plant somewhere on the east coast. This Canadian Durum competes for sales to that pasta plant with grain from a North Dakota producer.

The estimate is that the Canadian transportation subsidy is around 50 cents a bushel, some have said up to 80 cents a bushel. That is an enormous competitive disadvantage for an American producer when competing to sell to that pasta plant. A Canadian producer is going to be able to move that durum with a 50-cent subsidy and the free trade agreement says that is fine. I recognize that is not changed under the free trade agreement. That condition exists today.

When one negotiates a free trade agreement, one would expect to change some of the things we consider unfair on our side of the border. The free trade agreement will, unless something intervenes, be approved and that subsidy will be sanctioned.

Our producers are concerned about that. They don't think that is fair competition, and they don't think they can prevail.

Second, the Canadians have a unique way of marketing their grain. They have something called a Canadian Wheat Board, which is controlled primarily by Canadian farmers. We have a bunch of the biggest and brightest grain trading producers in the world.

The Canadian Wheat Board now will not allow American grain to come into Canada because it won't license that grain to come in, but will license Canadian grain to go to the United States.

After the free trade agreement is completed, we will have a situation in which the Canadian Wheat Board will not allow American wheat to come into Canada, but Canadian wheat will have easier access to the United States with no duties. A U.S. wheat producer will say that is not fair, and it results because of the different kinds of international marketing systems that exist in both countries.

The third area of concern was testified to in Fargo. We pay certain premiums for certain higher grades of wheat. Canada does not have the same system, and the fear is that the Canadian Wheat Board will license more Canadian wheat to come over and seek our premium prices. I think that also is a legitimate concern.

The fourth point I would make, Mr. Chairman, is that section 22, notwithstanding the comments we have heard from those who negotiated it and notwithstanding the comments we have heard from those from the U.S. Department of Agriculture, has been weakened. Section 22 has been the political club that says to another country, don't move products in here that will undermine a domestic agricultural programs that is in place.

That is what section 22 has been designed to accomplish. I don't think there is much question but that the FTA weakens section 22.

Those are four areas, Mr. Chairman, in which our producers express some concern, and I think in all four areas, the concern is legitimate.

I am not unmindful of the fact this free trade agreement is not a free trade agreement dealing exclusively with agriculture. In fact, our agricultural trade with Canada is a very small component of the bilateral trade between the United States and Canada. It is likely that because it is such a small component that the negotiators spent very little time on agriculture. I can understand that, if it happened, because this is not the major part of our bilateral trade.

Even though it is a small part of the aggregate trade pattern, it is a very significant part of our livelihood in our region. That is why I hope that as we move through this year, we can work with you, your subcommittee members and staff and the USTR and USDA folks to see if we can resolve some of these issues without, of course, destroying the basic free trade agreement.

I think there are some areas in which we can make some changes, and perhaps some areas in which we can develop some complementary letters of understanding between the Canadian Wheat Board and us, for example. There are indeed some things we can do that will address these problems.

My plea today is to ask the subcommittee and the full committee to take note of these problems. They are real problems, in my judgment, but if we work together, I think there is some real progress that can be made in addressing those problems.

Mr. Chairman, I would then submit my entire statement for the record, and thank you for the courtesy.

[The statement of Mr. Dorgan follows:]

TESTIMONY OF
THE HONORABLE BYRON L. DORGAN
BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
ON
THE UNITED STATES-CANADA FREE TRADE AGREEMENT
MARCH 25, 1988

Mr. Chairman, thank you for this opportunity to speak on the U.S.-Canada Free Trade Agreement (FTA). The hearings this Subcommittee has held during the last several weeks have been helpful in understanding the implications of the agreement. I especially appreciated your willingness to have a field hearing in Fargo, North Dakota two weeks ago so that regional groups could express their opinions on the FTA.

The impact on the U.S. economy of the Free Trade Agreement with Canada varies from sector to sector. Some segments of our economy might benefit greatly when high tariffs are eliminated. U.S. service industries, especially banks, and U.S. investors will gain. But, certain import-sensitive sectors will no doubt be harmed by the FTA.

Let me share with you some special concerns I have in the agricultural area. I realize that agriculture makes up only a small percentage of the trade between the two countries, but in North Dakota it's the foundation of the economy. Two weeks ago at the Fargo hearing many agricultural producers, such as wheat, sugar beets, and barley, came forward to express their views on the FTA. They and I both believe that there is a lack of balance in certain provisions. In some instances, the FTA will place American producers at a substantial disadvantage in competing with their Canadian counterparts.

Let me share with you my specific concerns about wheat:

First, consider what happened to Canadian grain transportation subsidies in the FTA. The agreement got rid of rail transportation subsidies for grain shipments to be exported out of western ports, but retained the subsidies for grain positioned at Thunder Bay on Lake Superior. Subsidies at Thunder Bay are not conditioned on export, but have the practical effect, when applied to grain going to the U.S., of enhancing the competitiveness of the product. The average benefit of these subsidies is about $.50 per bushel. Thus, Canadian wheat will continue to benefit from this transportation subsidy as it moves into American markets.

Second, currently Canada restricts imports of wheat and wheat products through an import licensing system that now virtually bans imports, and under the FTA this system will continue for some time. In contrast, the American border is basically open to Canadian wheat imports. Under the FTA Canada will be able to continue its import licensing system until "support levels" in both countries become equal. The current calculation to determine these support levels shows higher support for U.S. wheat. I question the support level formula used under the FTA, because it does not take into account some of the less tangible effects of programs in each country. Basically, the formula is biased against certain kinds of farm programs used in the U.S. The result is that the Canadians will continue to use their import licensing system against American wheat until some uncertain date in the future.

Third, Section 22 of the Agricultural Adjustment Act of 1933 has been tampered with under the FTA. Section 22 currently allows the President to impose quotas or fees on imports of agricultural products that undermine U.S.D.A. commodity programs. Under the FTA imports of grain would have to "increase significantly as a result of a substanital change in either Party's support programs for that grain" before Section 22 could be imposed. The practical effect of this wording is that Section 22 is weaker. This is unfortunate because the existence of a strong Section 22 has been useful in causing the Canadian Wheat Board to exercise some restraint in its pricing of wheat going to the U.S. market.

Thus, I believe that the wheat provisions lack balance in the FTA, with the U.S. conceding more than Canada. It is my hope that we can address some of the aforementioned problems in the implementing legislation for the Free Trade Agreement and through other means. I look forward to working with you, Mr. Chairman, and my Colleagues on Ways and Means and the Administration on these issues.

Chairman GIBBONS. Thank you, Mr. Dorgan.

I think your statement accurately reflects the testimony as I recall it out there. As the meeting broke up out there, I called the staff together and we critiqued what we learned from the meeting, and I asked them to sit down and to identify the salient points of concern from your constituent point of view, and to write for me either a rebuttal or a proposal as to how the matters could be handled.

I haven't received that document yet. As soon as I do get it, I will share it with you, and we will work on it and see what can be done.

Let the record show, though, as we go into this that in the subsidy areas, while the negotiations were going on, some subsidies were discussed and some subsidies were changed or the action that can be brought against them was changed.

But because the agreement may be silent on a particular subsidy or may not dispose of a particular Canadian subsidy does not mean that either we or the Canadians are licensing that subsidy. The remedies that are currently available under U.S. law and that are available in the future under U.S. law are still acts of a sovereign nation and available.

That is true on the Canadian side as well as on our side of the border. But no one should read into this agreement that we are in any way giving up any of our antisubsidies laws. The only change that has been made in this is a matter of procedure and the dispute settlement mechanism that is included in the agreement is designed to replace the judicial review, the current judicial review that we have in our statute.

And if the dispute settlement mechanism finds a subsidy, it would be just as binding upon the parties as if it had been found under our current law. So, I tried to be careful in stating that, I didn't want to overstate it or understate it, but that is the position that I think we should go forward with.

Thank you again.

Mr. DORGAN. Mr. Chairman, if I might make a statement on that. I understand your statement, and I think your point is clear and likely correct, but I think it is also correct that in disputes with Canada in the years ahead, they will allege that we negotiated a whole series of things. They will say we negotiated away certain things and left in place other things. It was all part of a package.

We are finding a similar situation in the 1986 Tax Reform Act. Things we never did, things we didn't deal with, people now say we had made a deal on or had agreed that we would leave this if we didn't touch that. My fear is, as we go down the road, someone will say, that subsidy exists, but we negotiated a whole range of things, and we left that as a quid pro quo for a series of other things that happened. That is my fear.

Chairman GIBBONS. I could recognize that argument may be made, but that is not the way I interpret it. And it is not the way our negotiators interpret it, as I understand it from my discussion with them. This is not a complete free trade arrangement; it is merely a freer trade arrangement. It has been made clear from the beginning that our laws concerning subsidies and countervailing and unfair trade practices are not waived or are not compromised by what has gone on here.

In order for them to be waived or compromised, they must be specifically changed by the U.S. Congress, and they will not be changed except under the appropriate procedure that we have. This agreement does not change those laws, with the exception of the review process, the judicial review process.

Mr. DORGAN. Let me make one further comment, Mr. Chairman, before I close. We have a completely different system than the Canadians in how we price our products. The Canadians have a two-tier pricing system and we have a system that gives an enormous subsidy to consumers. What we do is move grains to consumers at a dollar less than the cost to produce, so the consumer can have cheap food, and we then pay the farmer a deficiency payment or something of that nature to make up for it. We call what is in the front end a subsidy to consumers, at the back end we call it a subsidy to farmers.

We have something in this FTA called producer subsidy equivalents, and my fear about that is there are probably only two living Americans and Canadians who know how to compute it. It is so complicated.

Second, our system is so different we are attempting to control supply even as we create price subsidies for farmers to subsidize consumers. While we control supply, we set aside large batches of our land in order to forestall future production.

As we set aside great amounts of our land, Canadians produce more. What they do is unilaterally take advantage of our supply control mechanisms. I fear that the producer subsidy equivalent formula is something no one understands and cannot work considering the ways the United States and Canadians deal with their agricultural communities.

Chairman GIBBONS. I think we can be consoled we will never run out of problems in this area. We are going to have a lot of them, and we are going to have to continually attack them.

Mr. Frenzel.

Mr. FRENZEL. Thank you very much, Mr. Chairman.

I want to thank the witness for his testimony and apologize to him for not being present at previous week's hearing in North Dakota so I would know more about the subsidy. But as I look at the three items on your bill of particulars in your testimony here, first is complaints about a particular Canadian subsidy, and I think Mr. Gibbons indicated subsidies are not condoned on either side of the border in the FTA agreement, and are still countervailable.

Obviously, we don't like Canadian subsidies and the Canadians don't like American subsidies, which takes us into the second item that you listed here. You find fault with the formula. Can you kind of review that point for me? I question your statement here about the support level formula used under the FTA. You say in your testimony that the current calculation used to determine support levels shows higher support for U.S. wheat than Canadian wheat.

Can you explain that?

Mr. DORGAN. The United States has designed a policy I have not supported that says what we ought to do is drive down grain prices. We have been enormously successful in that in recent years. If you try to hold the target price, using wheat as an example, at a static level, that means the deficiency payment is larger. At $2.40, that means the subsidy to farmers grows.

That is what has happened in the budget to the agricultural function. My contention is that is not a subsidy to consumers, it is a subsidy to farmers.

Mr. **Frenzel**. Even though it is available at $2.40?

Mr. **Dorgan**. Sure. It is a position I don't understand even today, but it has been one that has prevailed for many years. As we lower prices, explode the cost of the agricultural program and attempt to encourage set-asides and paid differentials to force down production, the Canadian system provides higher domestic prices, lower prices for export and takes advantage of our set-asides by planting more when we are planting less.

By our planting less we are attempting to deal with the worldwide overhang in product. My contention has always been we can't do any of this unilaterally. If we simply plant less, several other countries will plant more and take advantage of our so-called production control system.

Mr. **Frenzel**. I think I understand that point. What I was trying to get at is this formula.

Mr. **Dorgan**. The point I was trying to make about the formula, I don't think anyone understands what the producer equivalency formula is and if it is fair. Maybe you can check with the staff. If they know how it is computed, bless them. My guess is they don't understand how it is computed. I don't.

You probably don't, and I would like to find a living person who does.

Mr. **Frenzel**. The reason I asked you is because I certainly do not. I assume that responsible people tried to develop a reasonable formula. If it can be shown that it is not reasonable, then it would be a good thing to repair it.

Mr. **Dorgan**. In fact, you are the practicing teacher of this more than anyone. The first rule of legislating is to assume nothing, and I certainly take that position with respect to the producer subsidy equivalent calculation. It is something I think we ought to try to understand better in the coming weeks.

It is inconceivable to me that a system that has driven down prices for wheat to the middle $2 range can be computed so that it shows a higher subsidy to American farmers than Canadian farmers.

Mr. **Frenzel**. Okay. Let me follow up then. Your point is that because of our agricultural policy, we are in a position of disadvantage under the FTA?

Mr. **Dorgan**. Yes. They have a monopoly which determines who imports what to Canada and how much they export and to whom. That monopoly is the Canadian Wheat Board. It is a completely different system than ours. What we are trying to do is merge a couple systems in an agreement that, in my judgment, can't be merged very well.

Mr. **Frenzel**. Sure. The key item in the merger is to develop some way to evaluate those systems, which is the formula, which you indicate is not known very well to anybody, and I have to admit I am exhibit A in that allegation. It sure isn't known to me.

But, on the other hand, I have not been exposed to the complaints about it. May I ask further, again because I didn't attend the other meeting. Is Durum wheat a bigger problem than other kinds of wheat?

Mr. **Dorgan**. Wheat is a problem generally—

Mr. **Frenzel**. Is Durum a problem here simply because that is what is grown up there?

Mr. **Dorgan**. There is a great deal of Durum grown in North Dakota. I think 85 percent of the Durum in America is grown in our little area. Canada has begun to grow a great deal of Durum north of us, and they are increasingly competing for business to eastern U.S. pasta plants with that 50 cent per bushel Thunder Bay subsidy——

Mr. **Frenzel**. So that competition is relatively new in the historical scheme of things?

Mr. **Dorgan**. Generally yes. It is becoming more significant.

Mr. **Frenzel**. I hope that the subcommittee is going to take advantage of the opportunity that you give it to make sure that we are not reading into the FTA a series of collateral agreements not intended by either side, and I hope we can make that very clear as we move forward.

I, too, have been distressed by so-called elements in the social contract occurring by reason of tax reform, which the committee did not discuss whatsoever. I don't want that to be included as part of this. What isn't in the agreement, that which was taken off the table is not part of the agreement, and often we agreed not to include items, and I don't want those included by inference, reference or in any other way.

Again, Mr. Chairman, I thank the witness for his testimony, and I yield the balance of my time.

Chairman **Gibbons**. Thank you, Mr. Dorgan.

Our next witness is Congressman Ron Wyden.

Ron, you are no stranger to this room or to this committee. You have been very helpful to us in the past in our deliberations. We look forward to hearing from you.

STATEMENT OF HON. RON WYDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. **Wyden**. Thank you very much, Mr. Chairman, and I appreciate the opportunity to come before you.

I think you and the distinguished gentleman from Minnesota are two of the members I always look to on trade issues, and I really wish it wasn't necessary to come today, Mr. Chairman. I very much support the free trade agreement. I am just about as pure a free trader as they come, voted with the administration on textiles and against domestic content and the various retaliatory schemes that have been brought up from time to time.

Mr. Chairman, I really think the conduct of the Canadian Government with respect to the plywood provisions in this agreement are absolutely outrageous and amount to some of the most blatant protectionism the international trade community has seen in some time.

Now, what I would like to do for just a few minutes is outline it as we see it, Mr. Chairman, and also my colleague, Congressman DeFazio of southern Oregon, Eugene and southern Oregon, was to be here and is ill. I would like to ask for your indulgence, Mr. Chairman, his statement could be made part of the record, because he shares my concern and I was very anxious to have——

Chairman GIBBONS. Fine. We will do that. Would you please communicate to Mr. DeFazio, we are sorry that he is ill, but if at future hearing time, he would like to come in, we will be happy to hear him?

[The statement of Mr. DeFazio follows:]

STATEMENT OF THE HONORABLE PETER DEFAZIO

Thank you, Mr. Chairman. I appreciate this opportunity to discuss the Free Trade Agreement. My colleague from Oregon has addressed the plywood issue, so I will keep my comments brief.

Let me begin by saying that the Free Trade Agreement is a positive step for both the United States and Canada; however, a serious flaw exists where plywood is concerned.

Oregon is the nation's number one producer of plywood. Most of this plywood is produced in my district. The states of Oregon and Washington account for 40% of America's plywood. This issue is critical to our region. After a prolonged recession, the economy of my district is beginning to improve, but we depend upon the health of our wood products industry for this recovery.

The way that the Free Trade Agreement is written with respect to plywood threatens dozens of small businesses in our region. As you know, this agreement only addresses tariff barriers to plywood trade. In reality the biggest barriers to American participation in the Canadian market are their building codes.

The U.S. has traditionally maintained a position that tariff barriers be reduced only when nontariff barriers are also reduced. What happened here? For some unknown reason, our negotiators abandoned this position and our domestic producers in the Free Trade Agreement.

Since the Agreement was signed the Canadians have not acted in good faith. They have refused to change the building codes. Therefore, the nontariff barriers will continue to bar U.S. participation in the Canadian market.

My principal concern here is that the United States is being snookered again. This is a pattern that has been repeated again and again in dealing with the Japanese. They will reduce a tariff barrier but they'll erect five nontariff barriers, successfully prohibiting U.S. products, particularly our wood products, from entering their markets while they continue to buy raw materials from us.

With Canada it's a little different, but in the area of plywood, we're confronted with the same problem. We are about to open the U.S. market with the cry of free trade. The unfortunate thing is the standards that exist in Canada will effectively prohibit two-way free trade, so we will have the typical one-way free trade which is otherwise known as protection on one side of the border and an open market in the United States. This will cost us jobs and production—at significant expense to my district and the State of Oregon. Our mills have already suffered from the export of raw logs. We should not allow our domestic plywood industry to suffer as well.

So I am here to strongly suggest that if we are going to open our markets, that we must also deal with these nontariff barriers. I don't believe that they are justified in terms of structural or other questions. They are clearly a market device to prevent U.S. firms from successfully entering the Canadian markets.

The bottom line is that plywood exports are not affected by Canadian tariffs as much as they are by the nontariff building code barriers. It makes no sense at all to just deal with the tariffs. We must include nontariff barriers if this is to be a free trade agreement.

Mr. WYDEN. I will let him know. That is the kind of thing you always do to accommodate the Members. I will let him know of that, and I know he will appreciate it.

Mr. Chairman, the long and short of it is as the agreement stands today, because of building code restrictions in Canada, about

80 percent of our plywood, CDX grade plywood, couldn't get into the Canadian market.

On the other hand, the agreement gives the Canadians open access to our market, and what I seek consistent with my free trade philosophy and the free trade votes I have cast over the last seven years is an arrangement where both sides get access to each other's market.

We want to put up no barriers, we only want to knock barriers down. Unfortunately, as I said, the Canadian Government has gone to extraordinary lengths to try to set up these blatant protectionist measures and systems to keep our plywood out.

Now, under the agreement in the administration's view we were to have gotten a foot in the door in their own words, in terms of trying to get into that Canadian market. Under the agreement, the Canadian Mortgage and Housing Corporation was to have tested and hopefully approved CDX grade plywood for use in housing guaranteed by the Canadian Mortgage and Housing Corporation underwriting system.

And this, in the administration's view, was their door opener, the good-faith guarantee that we would actually get access to the market. But, Mr. Chairman, literally 48 hours after my subcommittee held a hearing to look at this particular area, the Canadian Mortgage Guarantee Agency slammed the door on us, and in fact, they didn't even give us a day in court, they just dismissed it out of hand.

There wasn't even a review of the whole situation even as it related to giving us a tiny, tiny portion of this market. And it is my view that this was really a demonstrable act of bad faith and far outside the spirit of this whole agreement to try to bring about fair and free trade on both sides.

Frankly, I think the administration was floored at the action of the Canadian Mortgage and Housing Association and quite embarrassed about it, because they had just come to my subcommittee and said that this provision was going to in effect be a door opener, even though they knew it was small, it would be a door opener and 48 hours after they had come and defended that provision said that we didn't need anything extra, the Canadians just basically said to us in your face we are not going to do anything about really trying to give you a fair shake.

Now, recently the administration, particularly Ms. Ann Hughes, has really pushed very hard to try to turn this situation around; we have worked with them on almost a daily basis to try to deal with this. Ms. Hughes has said her Department now supports development of an alternative bilateral process that would give our product a fair test for use in the Canadian market.

And to her credit, Ms. Hughes has said the Department is not going to support tariff adjustments until that process is complete to the satisfaction of both sides. Now, the administration does believe that this country has the discretion within the FTA's current language to withhold language on plywood tariffs if they believe the other side is not living up to its end of the bargain, and if it turns out that the administration doesn't have that discretion, they do, but if they don't, Ms. Hughes has indicated the Commerce Department would support additional language within the agreement to provide that authority.

So, we are working very closely with the administration in this regard. Suffice it to say recently, events clearly demonstrate why the enabling language of this important legislation is really now more important than ever. But I would just say again that I think that we want to make this a free trade agreement as it relates to the whole trade agreement.

I am for it. I wouldn't support anything that would put in place more barriers. But I must say that unless we get very tough on the Canadians, who I think have put up every protectionist hurdle they can think of to keep our plywood out of that market, we aren't going to be carrying out the spirit of this agreement.

So, I thank you very much for the chance to come, Mr. Chairman. I would also ask that a letter to Ambassador Yeutter and Secretary Verity that was co-signed by 29 of my colleagues, members of the Forestry 2000 Group that I co-chair, could be made part of the record.

And I look forward to working with you, and particularly on these kinds of issues. Because for those of us who believe in free trade, as you do, and the gentleman from Minnesota does, and those of us who vote against these protectionist kinds of things, if we don't change things like the plywood provisions in the Canadian free trade agreement, the protectionists in this country are going to have more ammunition and more fodder for them to do the kinds of things that will injure the country and the world in the long term.

I thank you, Mr. Chairman, for the chance to comment. I look forward to working closely with you and our friend from Minnesota in genuine free trade and market-opening efforts around the world.

[The statement of Mr. Wyden follows:]

HEARING STATEMENT
CONG. RON WYDEN
THE U.S.-CANADA FREE TRADE AGREEMENT: IMPACTS ON DOMESTIC PLYWOOD MANUFACTURERS

HOUSE COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON TRADE

March 25, 1988

Thank you Mr. Chairman. It's an honor to give testimony before this committee, which today deals with an issue of critical importance to many of my constituents.

I am here to ask that my colleagues on the Ways and Means Committee, and on its Subcommittee on Trade, take a long, hard look at the way the proposed U.S.-Canada Free Trade Agreement affects plywood trade between our two countries.

Given the events of recent weeks, I think that now more than ever there needs to be language within the enabling legislation of this important treaty to ensure that neither nation's plywood industry holds an unfair advantage in the other nation's market after tariffs on both sides of the border are eliminated.

As it stands now -- and I think many of my colleagues from timber producing states agree with me -- building code restrictions in Canada unfairly discriminate against the use U.S.-made, CDX grade plywood. Mr. Chairman, that's fully 80 percent of the plywood produced in this country. It means a whale of a lot of jobs in Oregon and in other states.

My constituents share a common fear: that the free trade agreement as now written could mean a largely open structural plywood market in the U.S., and a Canadian plywood market that is largely closed to U.S. products.

Not only would access to a market in Canada worth roughly $200 million to $300 million per year be denied to us. The imbalance sets up a real opportunity for dumping by Canadian producers into U.S. markets, particularly in times of depressed plywood demand.

Mr. Chairman, I'd like to report to you what I think is an important, new development, and then tell you why I believe it may be a critical consideration in your deliberations on the treaty.

In the last few days, the Administration's FTA negotiators have adopted a position on the plywood issue which is much like our own.

I had a lengthy discussion this week with Ann Hughes, the Commerce Department's deputy assistant secretary for the Western Hemisphere. Ms. Hughes said that her department now supports development of an alternative bilateral process that would give our product a fair test -- its day in court -- for use in Canadian markets. She said that the department will not support tariff adjustments until that process is completed to the satisfaction of both sides.

She believes this nation has the discretion within the FTA's current language to withhold action on plywood tariffs if they believe the other side is not living up to its end of the bargain.

If it turns out that the Administration doesn't have that discretion -- and this is a vital point -- Ms. Hughes says the Commerce Department will support additional language within the agreement to provide that authority.

I think this is a big step forward. I'd like to tell you why.

The Subcommittee on Regulation and Business Opportunities, which I chair, held a hearing on this issue March 8. During that hearing, representatives of the Department of Commerce and the U.S. Trade Representative's Office declared that additional language providing substantive guarantees for our domestic plywood manufacturers wasn't needed. The reason: the Administration had forged a significant market "opener" for U.S. plywood within the framework of the treaty.

The Canadian Mortgage and Housing Corporation was to have tested -- and hopefully approved -- CDX grade plywood for use in housing guaranteed by CMHC underwriting. This, according to the Administration, was our good faith guarantee assuring our plywood manufacturers of a truly open market under the FTA.

But barely 48 hours after that hearing, the Canadian mortgage guarantee agency announced that they had decided not to hold a test of the CDX product. They argued that our plywood didn't even meet baseline requirements for consideration.

If you think this is good faith, well, I'd like to show you a bridge for sale in Brooklyn.

Frankly, I think our Administration was embarrassed by the Canadians' maneuver. Their foot-in-the-door turned out to be little more than a bad case of injured toes. If the situation is left unchanged, our domestic plywood manufacturers face a serious problem.

Mr. Chairman, in my four terms in Congress I've prided myself as being a free trader. Protectionism, in the long run, maintains industrial inefficiency and drags down our ability to compete in international markets.

And in general, I've got to say that the U.S.-Canada Free Trade Agreement is a strong document, a milestone in the trading history between our two great nations.

But I can't in good conscience support these provisions as written for plywood. Frankly, I think the results they'd produce would offer more red meat to the protectionists. I've written Ambassador Yeutter to ask that no adjustment of these tariffs be made until after the issues between Canada and the U.S. involving plywood are fully resolved in a way that is fair to both sides. I believe that there are enough fair-minded persons in government and industry in both nations to accomplish this, either within the free trade agreement or through some independent vehicle.

I've called for government certification of a good-faith process in this regard. Additional language mandating such certification would strengthen the treaty. Until that happens, however, I think the status quo for plywood tariffs should be maintained.

I would like to thank the chairman and the committee for this opportunity. I would also ask that a letter to Ambassador Yeutter and Secretary Verity co-signed by 29 of my colleagues be admitted as part of this hearing record.

Congress of the United States
House of Representatives
Washington, D.C. 20515

February 29, 1988

JOIN BIPARTISAN EFFORT TO INSURE FREE PLYWOOD TRADE WITH CANADA

Dear Colleague:

As co-chairmen of the Forestry 2000 Task Force, we are writing you today to ask that you add your signature to the attached letter to Ambassador Clayton Yeutter.

This letter describes our concerns regarding the possible adverse impacts of the proposed U.S.-Canada Free Trade Agreement upon domestic plywood manufacturers.

We ask that the Ambassador work with us to include implementing language within the treaty to address a significant, unresolved problem: Canadian building codes which prescriptively bar U.S. plywood from Canadian markets.

We consider this restriction a non-tariff barrier which cuts against the philosophical grain of the Free Trade Agreement.

If you would like to be a co-signator of this letter, or if you have any questions concerning this issue, please contact Steve Jenning (x57797), Nancy Newton (x55831) or Randy Hinaman (x54931).

Sincerely,

Ron Wyden

RON WYDEN

LINDSAY THOMAS

SONNY CALLAHAN

Congreſs of the United States
House of Representatives
Washington, D.C. 20515

March 8, 1988

Ambassador Clayton Yeutter
U.S. Trade Representative
600 17th Street
Washington, D.C. 20506

Dear Mr. Ambassador:

Before the Administration presents legislation to the Congress to enact the U.S.-Canada Free Trade Agreement, we wish to express our concern regarding the treaty's potential effects on domestic plywood manufacturers.

High tariffs on both sides of the border currently prevent importation of plywood by either Canada or the U.S. The FTA would, over a ten-year period, remove tariffs between the two countries. Unfortunately, Canada maintains a non-tariff barrier that will continue to block access to its construction paneling market even with ratification of the treaty.

Agreement by the Canadians to study a possible exemption for U.S.-made plywood used in residential construction backed by the Canadian Mortgage and Housing Corporation does not remove the barrier on the majority of the paneling market.

In other words, we will open our entire market to Canada, but Canada will open only a small share of its market to U.S. plywood. A blanket restriction will remain against plywood made from southeastern tree species, and against all plywood of CDX grade -- together, 80 percent of all plywood made in the U.S.

Since the Tokyo Round of Multilateral Trade Negotiations, it had been the position of the U.S. industry and the U.S. government that plywood tariffs should be removed only after Canada's non-tariff barriers were eliminated. That is still the position of the U.S. industry, and it is our position.

We are not moved by Canadian government arguments that this non-tariff restriction -- part of the Canadian national building code -- can not be removed by government order. While the building code may originally have been drafted by a private organization, the Canadian Standards Association, it is solely government action, the adoption of those standards by the

National Research Council and in the provincial governments' building codes, that unfairly bars the use of U.S. plywood.

We also strongly disagree with Canadian arguments that the quality of U.S. plywood is not adequate for the Canadian climate. The U.S. product has performed well in climates more extreme than Canada's -- Alaska's, for example.

Our industry is asking for a fair opportunity to compete under performance standards, as opposed to the prescriptive standards that Canada currently uses. If Canada adopts fair performance standards, based upon the strength and durability of the product, U.S. plywood will be able to compete in the Canadian market.

We fear the FTA could result in Canadian mills increasing their capacity in their protected home market and exporting to the United States. U.S. prices will be unfairly depressed and U.S. companies will ultimately face shutdowns or layoffs. Furthermore, the U.S. industry will be denied the full promise of the FTA -- equal access to the Canadian plywood market.

Mr. Ambassador, we ask for your help in including implementing language within the Free Trade Agreement to address these problems.

We look forward to your response and to working with you to draft these provisions.

cc.
Secretary William Verity
U.S. Commerce Department

Sincerely,

Ron Wyden
RON WYDEN, OR

LINDSAY THOMAS, GA

Sonny Callahan
SONNY CALLAHAN, AL

Beryl Anthony, Jr.
BERYL F. ANTHONY, Jr., AR

Larry E. Craig
LARRY CRAIG, ID

WAYNE DOWDY, MS

Mike Espy
MIKE ESPY, MS

CLAUDE HARRIS, AL

Clyde C. Holloway
CLYDE HOLLOWAY, LA

J. ROY ROWLAND, GA

Bob Smith (OR)
ROBERT F. SMITH, OR

Harley O. Staggers Jr.
HARLEY O. STAGGERS, Jr., WV

Pat Williams
PAT WILLIAMS, MT

DOUG BOSCO, CA

Peter DeFazio
PETER DEFAZIO, OR

Bill Emerson
BILL EMERSON, MO

Ronnie G. Flippo
RONNIE G. FLIPPO, AL

Jimmy Hayes
JAMES HAYES, LA

ED JONES, TN

Sonny Montgomery
G.V. MONTONGOMERY, MS

BILL SCHUETTE, MI

FLOYD D. SPENCE, SC

AL SWIFT, WA

ROD CHANDLER, WA.

Richard Ray

RICHARD RAY, GA.

Richard Stallings

RICHARD STALLINGS, IDAHO

Bob Davis

ROBERT DAVIS, MICH.

DON BONKER, WA

Toby Roth

TOBY ROTH, WISC.

Arthur Ravenel Jr

ARTHUR RAVENEL, S.C.

Chairman GIBBONS. Thank you.

I realize that standards can be used as a trade barrier, and we do not license a trade barrier just because we were not able to remove it in this agreement.

Could you explain to me, as you understand it, just how this works? As I understand it, their grading system and our grading system are different. Our top grade is not as high as their top grade. Is that correct? Is that the way it works?

Mr. WYDEN. Well, there are a couple of simple points I think I can make, because as with all of these kinds of thing, it is very arcane. The restriction is really on the basis of veneer and, the way the Canadians have set things up, the Canadian product qualifies for that reason and our product doesn't, it is not for any reasons relating to performance, it just doesn't qualify because the Canadian product is different.

Now, we are talking specifically about CDX plywood, and the C is the part of the product that have small holes; the D is the part that has the big holes; the larger knots don't meet the Canadian standards. That is probably the simplest explanation I could give of this thing.

Again, I think Ms. Hughes and the administration are on track right now. They got industry experts and government people trying to come to agreement on the tests and performance standards that would be acceptable to both sides, and we know where we want to go.

We want to have a harmonized system of plywood standards, something that is harmonized on both sides. So it involves veneer, it involves this problem particularly of the large knots and something that we see in our product, and if the administration can be successful in these new bilateral negotiations, we will be able to come up with a harmonized system of standards and that is what is in the interest of the world markets.

Chairman GIBBONS. Well, as I understand it, and I don't understand it thoroughly, essentially your complaint is the Canadian Government and Provincial governments and their housing insurance system will not approve of the use of U.S. CDX plywood.

Mr. WYDEN. That is correct.

Chairman GIBBONS. Saying instead that only plywood that has——

Mr. WYDEN. Small knots.

Chairman GIBBONS [continuing]. Small knots is acceptable.

Mr. WYDEN. It is a knotty problem.

Mr. FRENZEL. We expect better than that of our witness.

Mr. WYDEN. The gentleman from Minnesota is one of the great punsters.

Chairman GIBBONS. Is there any evidence that you know of that makes our plywood really inferior to theirs? Is it just their imagination or what?

Mr. WYDEN. It is not just Ron Wyden's view. Our own technical experts who have been involved in this testified before my subcommittee, said there is absolutely no performance base difference, absolutely none.

And yet, the Canadians have gone to every possible kind of convoluted explanation and process to keep our CDX out, even though the experts feel that there is no difference.

Chairman **Gibbons**. Mr. Frenzel.

Mr. **Frenzel**. I want to thank the witness for his testimony, but also for his previous assistance he has given to this committee. We like working with you.

Chairman **Gibbons**. Absolutely.

Mr. **Frenzel**. We particularly appreciate your work in connection with Customs areas where you are extraordinarily helpful in helping us put together districts. It made a lot more sense when we were done than when we began. I think you will find us sympathetic, but not pushovers.

One of the questions that I have is your assertion that 80 percent of the Canadian market is denied to you. Our Canadian friends in your parallel industry suggest about a third of the market is subject to the sheathing barrier. Can you explain the difference? If it was 5- or 10-percent difference, I guess my eyebrows wouldn't have raised.

Why do we come out so different in our estimates of the market protection?

Mr. **Wyden**. Well, let me make sure I am understanding this. The gentleman says that he has gotten figures that say instead of 80 percent of the market being denied to us, it is only something like 30 percent?

Mr. **Frenzel**. A third, I think, is what I have here. Two-thirds of the Canadian markets, says the Council of Forest Industries of British Columbia, two-thirds of the Canadian market for plywood is not governed by a building code, and is fully open to U.S. DC plywood today.

Mr. **Wyden**. Well, that is not structural paneling, as I understand it, and the heart of what we want to do is structural paneling, and to get into that very valuable market, the valuable private sector market.

Mr. **Frenzel**. So, we are talking about a particular kind of plywood that is used for certain applications.

Mr. **Wyden**. That is correct.

Mr. **Frenzel**. And how much of the plywood market is that?

Mr. **Wyden**. Our numbers are that fully 80 percent of the plywood that is produced in our country can't get in because of the various hoops and standards that have been put in front of us by the Canadians.

Mr. **Frenzel**. So it is 80 percent of a fraction of the plywood for a sector of the plywood market.

Mr. **Wyden**. Right.

Mr. **Frenzel**. So we are only talking about the sheathing problem; is that correct?

Mr. **Wyden**. But it is 80 percent of our product overall, this CDX plywood we are trying to get in.

Mr. **Frenzel**. Well, 80 percent of that kind of plywood. I am going to, Mr. Chairman, ask for some staff help on this to try to help us figure out what we are talking about here.

Mr. **Wyden**. I would say to the gentleman, if I could just add in addition that perhaps the most important part that we know for a fact that we are not getting access to a market that is worth $200 to $300 million to us per year.

That is what we are talking about in just raw dollars.

Mr. **Frenzel**. Okay. We will see what—we appreciate having that information. That is in your testimony. We will see what others say about that. With respect to the basis for the code, since I don't know anything about plywood and don't know anything about building, I approach the question from a position of perfect ignorance.

I am told, however, that the Canadian allegation is that sheathing in home building is likely to be exposed to the weather and where you have the long knots or the larger imperfections, you have exposure to rain and the possibility of a phenomenon described as delamination. Could you comment on that?

You indicated they had used reasoning that was tortured, or that they had made unreasonable—set the standards unreasonably.

Mr. **Wyden**. I would make two points on that to my friend. First of all, this to me was the gut kind of question as we got into it, and what really concerned me at the outset was every one of our experts said there was no technical reason why our product shouldn't be used in Canada, and this was the testimony before our subcommittee. These were the government experts, not people in the private sector, and particularly a gentleman who works with—his name is Schaffer, who is in the forestry area for our Government.

The second thing is our product is used in markets like Alaska, where there is also weather that would be very similar to the Canadian situation. So, I think this argument that somehow the CDX plywood, and particularly the D portion, that is the portion that is really being in controversy, is not acceptable for the Canadian market.

It is not borne out by our impartial government experts, and I would be happy to furnish the gentleman the testimony that was given by our experts on that point, because I think it is——

Mr. **Frenzel**. I think we would like to have it. I assume Canadian home construction would be more comparable to your area and mine than it would to Alaska. Canada is a tiny strip 3,000 miles long or at least its home-building industry is, but——

Mr. **Wyden**. I always like to use the word "case," and it seems to me that any portion of our country, had the product not been satisfactory, our experts would have picked up on it and would have said, well, perhaps in this one area it would show it wasn't fit.

But what our experts said was that in all particulars our product was technically sound, technically qualified for the Canadian Government, and these were—in fact, if I might—it was the gentleman who gave the testimony was Dr. Irwin Schaffer from the U.S. Forest Service's Products Research Section, and he was asked at some length this question about technical differences between our subcommittee, and he said there were absolutely none.

Mr. **Frenzel**. Good. We will be interested in looking into that.

Now, one of the barriers to the market up there is a 15-percent tariff, is that not correct, and that will over the period of years be phased out. But I am advised that is the largest barrier to, and I don't know about sheathing products, but in general plywood products, the tariff is the largest barrier.

Is that a reasonable statement or not?

Mr. **Wyden**. We are absolutely convinced, like the gentleman, these tariffs have got to go. We want them out. But these nontariff barriers are absolutely critical as well. So, the theory has been for years that we would link our reduction in tariffs to also doing something about those nontariff barriers.

I share the gentleman's view to get rid of those tariffs is something that is absolutely essential for more trade.

Mr. **Frenzel**. I think the chairman and I share your view, we want to get rid of other barriers as well. We are not unaware that standards are created for reasons other than often specified. Our noble upper house here last week passed a gas guzzler tax which applied to all cars that consumed more than 22.5 miles per gallon, except those made in the United States.

So, we are about to put into our law the same kind of interesting reasoning that is alleged here has been done in Canada. It a gimmick, or that kind of gimmickry is widespread, I am afraid. But you have given us good stuff to look at, and we will try to follow up as you will with the Department of Commerce and the USTR.

Mr. **Wyden**. I thank my friend very much. Where I would like to be at the end of this line is get rid of those tariffs, that is in the interest of both countries, and have a harmonized system of plywood standards so that both countries would be able to get access to each other's market, and the gentleman is always a pleasure to work with, as the chairman.

I look forward to pursuing these matters.

Mr. **Frenzel**. Thank you. I yield my time.

Chairman **Gibbons**. Thank you very much, Mr. Wyden. You have been very helpful as always. This will conclude our hearing for today. We will hold the record open for future hearings to be announced. Thank you for coming.

[Whereupon, at 10:20 a.m., the subcommittee was adjourned.]

[Submissions for the record follow:]

TESTIMONY BY
DEXTER F. BAKER
CHAIRMAN OF THE BOARD AND PRESIDENT,
AIR PRODUCTS AND CHEMICALS, INC.
ALLENTOWN, PENNSYLVANIA 18195
22 FEBRUARY 1988

I am Dexter F. Baker, Chairman of the Board of Directors, Chief Executive Officer and President of Air Products and Chemicals, Inc. My written testimony to the House Ways and Means Committee's Subcommittee on Trade concerns the United States-Canada Free Trade Agreement.

The recently-signed Free Trade Agreement which both houses of the Congress will be considering later this year does not give U.S. industry all that it needs. Nevertheless, it is a singular document which, even in its current form, will provide synergistic benefits to both sides of the world's greatest trading partnership. Initially, the Free Trade Agreement's balance of benefits will be more disadvantageous to some sectors of the U.S. economy than to others. Later, that imbalance may be smoothed as the agreement takes hold. The question for those who will be initially disadvantaged by the Free Trade Agreement, or whose trans-border problems will not be eased, is whether the Free Trade Agreement's ultimate benefits will be worth the wait.

I believe the Congress should ratify the Free Trade Agreement. We probably will not have another opportunity this century to forge such a trade pact with Canada, if we fail to ratify the Free Trade Agreement in 1988. Besides the economic benefits gained from the Free Trade Agreement, it will set a useful precedent for our Uruguay Round negotiations and will serve notice to other GATT members that the United States is willing to negotiate bilateral economic alliances which may, by their nature, become increasingly important if the GATT as a whole cannot be improved.

I have referred to shortcomings of the Free Trade Agreement as it now stands. Although it addresses most concerns about energy access, tariff elimination and freedom of investment, it remains wanting in such areas as protection of intellectual property rights and the curtailing of subsidies. Perhaps its greatest shortcoming is its failure to redress the subsidies problem. Certainly direct and indirect subsidies exist in both countries. A subsidy, be it an outright cash grant, a rebate on energy rates, tax forgiveness, or provision of free or low-cost land and manufacturing facilities, is a distortion of trade, an artificial shifting of benefits from workers and taxpayers of one country to those of another.

Canada is not a mirror image of the United States. Its economic and social agendas differ markedly from our own. It is a country with a small domestic market next to one with a large one, a country with bountiful supplies of energy and raw materials far in excess of its own needs. Consequently, Canada sometimes subsidizes its products and production facilities to achieve its ends. When a large share of subsidy-driven output is dedicated to export markets, the interests of our own workers, investors, and taxpayers are weakened.

My company, Air Products and Chemicals, Inc., faces the prospect of competing with such subsidized products. Briefly, the subsidy concerns a $22 million liquid hydrogen plant at Magog, Quebec which will be built by the U.S.-based subsidiary of a European industrial gases producer. Liquid hydrogen manufacture is both capital and power intensive. We believe this plant will benefit from a $4.8 million direct government grant, reportedly to be sourced equally from the federal and provincial governments. In addition, it may further benefit from favorable power rates provided by the state-owned utility.

The capital subsidy program to which I referred was offered under the sponsorship of the Quebec government's Ministry of Industry. This program lapsed at or about the end of calendar year 1986, but the beneficiary remained eligible because it had filed a request for subsidy prior to the expiration date. The bottom line is that a Canadian plant which will export much of its production to the United States was endowed with a 20 per cent capital cost advantage even before construction began.

In addition to that cash grant, we believe that Hydro Quebec, the local utility, offers very favorable power rates to large regional users. These rate offerings differ from project to project, but may include as large a discount as 50% during the early years of a project. In later years, the project's operators may have to pay back this discount, either as a premium power rate or as a percentage of the plant's direct profit. The variability of these rate discounts and their uneven timing casts uncertainty as to whether they are true subsidies. However, lower power rates at a project's onset can improve startup phase economics when the plant is not fully loaded. Since Hydro Quebec is owned by the Quebec provincial government, favorable power rates are yet another level of government support to a major export project.

There is no large liquid hydrogen market in Quebec. A similar plant that was just completed in Quebec will export about 70 per cent of its output to the United States. These plants are principally mechanisms to export cheap hydro-power in contained form. It is particularly nettlesome to Air Products to face a fictitious cost advantage at the same time our government has negotiated a free trade agreement with the subsidizers. As long as such subsidies are not countervailable without proof of injury, U.S. trade remedies offer little help. Therefore, while we didn't expect this Free Trade Agreement to undo decades of subsidies, we were disappointed that it didn't address them at all.

The signing of a Free Trade Agreement is only the beginning of the process. Congress' approval of the Free Trade Agreement, if it does approve, should not be the final stroke. I hope that Congress will declare its sense that the executive branch should continue to negotiate with Canada to align the two countries' trade remedies and dispute settlement processes and to curtail subsidies. In fact, the Free Trade Agreement commits both parties to develop a substitute system of bilateral rules for antidumping and countervailing duties within five years (with a possible two year extension). But it holds no similar hope for the curtailment of subsidies.

Trade remedies such as antidumping findings and countervailing duties, are surgical dressing that cover wounds created by subsidies. Trade remedies, no matter how well-crafted, can not mitigate the trade-distorting effects of subsidy-driven exports. Two economic partners who are committed to forming a more open trade alliance should be able to define, curtail or eliminate the most blatant of these.

The ratification of this Free Trade Agreement presents a unique opportunity for both sides to mutually solve the complex problem of subsidies. The five-to-seven year period during which both sides are obligated to negotiate an alignment of our trade remedies should also be used to negotiate which subsidies are acceptable and which are actionable under law. We also need to reexamine the need to extend the benefit of an injury test to subsidy beneficiaries in advanced economies, to reduce the degree of injury which will trigger an executive branch response, and to make threat of injury a more precisely defined actionable cause for retaliation.

Therefore, I hope that the Congress will couch its approval of the Free Trade Agreement in strong, clear language which will make its success dependent not only on the development of mutually satisfactory trade remedies, but also on the restriction of subsidy-driven exports.

STATEMENT OF
JACK SHEINKMAN, PRESIDENT
AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL-CIO

TO THE

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

IN OPPOSITION TO
THE UNITED STATES-CANADA FREE TRADE AREA AGREEMENT

INTRODUCTION

The U.S. Canada Free Trade Agreement hurts workers on both sides of the border, despite the exaggerated optimism of our governmental leaders. While the idea sounds good in the abstract, the agreement negotiated by the Reagan Administration and being presented to Congress has so many problems and flaws that we must conclude that we are better off without it than with it.

Our union represents 282,000 members, including 30,000 Canadian members, who work mostly in the clothing and textile industries. We also have a significant number who work in other manufacturing industries affected by this agreement. No additional jobs will be created for our members. Some jobs will move north and some South in the various product areas of the textile and apparel industry, but in sum there will be no increase in the total; in fact, there will a decrease.

The major consequence of this agreement will be to provide an incentive for imports from elswhere to flood into both countries to take advantage of an enlarged market and of the inability of Customs to properly monitor the trade flows across our huge border. The existing quota agreements of both countries will be both more fully filled and more highly circumvented. We are also very concerned that the precedents set by this agreement will be extended to other countries or multilaterally through the current round of GATT negotiations.

Our nation has serious trade problems which is just stating the obvious. What bothers our union is whether this free trade agreement and its precedents will contribute toward reducing the continued hemorrhaging of our national wealth through the trade deficit and enhance our long term international competitiveness. The Administration has already spoken about negotiating free trade agreements with Mexico, the ASEAN countries, even Japan. Our union has contracts with numerous companies that have plants on both sides of the U.S.-Canada border and we have always worked closely with our Canadian members to insure that wages and working conditions are not skewed in favor of one side over the other. This is true even with many nonunionized companies -- a basic equality of competitive conditions. But this certainly does not hold for other countries being considered for free trade agreements.

The Canadian Free Trade Agreement does not add to increased U.S. international competitiveness. The addition of a market of 20 million more people provides no additional economics of scale nor greater competition-created efficiencies. Most of that has already occurred through our existing trading relationship. But several new distortions have been added in this agreement that will prove harmful to American interests and add to our trade deficit.

You have already received testimony from the AFL-CIO detailing a number of inequities in this agreement. Our union concurs with their essential point that this agreement represents a loss of control and sovereignty over our basic trade laws governing subsidy, dumping, Section 301 unfair trade practices and Section 201 import relief. Our union is opposed to a system which makes final decisions affecting our member's livelihood removed completely from any necessity of accountability and from control of their own elected representatives. And if this system were to be extended further in other bilateral agreements or multilaterally through the Uruguay GATT trade round negotiations, we predict enormous difficulties and many undesirable consequences for U.S. workers.

For us in the textile and apparel industry, this precedent takes on enlarged proportions than for most others. The current Multifiber Arrangement (MFA) expires in 1991 and there is no assurance its regime will be continued, even in modified form. Thus we are vitually concerned about what actions we could potentially take under Article 19 of GATT or any of our domestic trade laws to seek restrain from overwhelming or unfairly traded imports.

The U.S. textile and apparel industry is strongly affected by many other parts of this agreement.

I. Bigger Market Attracts More Imports

The U.S. already takes in a disproportionately high share of the developing world's exports of apparel products despite our quota agreements. The most current data show the U.S. receives 59 percent of developing country apparel exports, more than double the EEC and Japanese intake combined! (EEC receives 22.7 percent and Japan 5.6 percent.) Canada likewise takes in a disproportionate share of world exports. By creating a single market between the U.S. and Canada there is an even greater incentive created to concentrate world exports toward our market.

All major textile and apparel markets throughout the world are protected from imports to a greater or lesser degree, MFA or no MFA. The U.S. is certainly less protected than most others. By combining the U.S. and Canada into a single market, and with the current Administration's policy to substantially expand apparel import quotas in the bilateral agreements it is negotiating, developing country exports will be even more heavily focused and concentrated on our market.

II. Transhipment and Fraud Will Increase

The textile and apparel rules of origin under this free trade agreement are so complex and unenforceable that unscrupulous importers will have very little problem undermining the quota restaint programs in either country. The U.S. Customs Service is already overwhelmed in efforts to enforce existing regulations. It admits to physically inspecting only 1% of all textile and apparel shipments that are entered. To now add a tariff-rate quota in both directions while necessary for the industry - will make the job for Customs just that much more impossible. Importers will take advantage of quota agreement shortcomings in either country and tranship across the border. The penalties for fraud or mislabeling are so small relative to the potential monetary gain that it makes them almost inconsequential.

III. No Implementation Provisions Are Set Forth

Neither in the free trade agreement nor in any legislation thus far introduced has any arrangement been made for interpreting or implementating the basic sections of the agreement. For example, Canada can send to the U.S. 50 million square yard equivalents of apparel made from fabrics produced in a third country at the reduced FTA duty rates. If these imports are concentrated or over loaded in one or a few market segments, entire sections of the U.S. apparel industry could be destroyed. Authority must be lodged somewhere to make and enforce regulations on how the agreement is to function, with the opportunity of having input into the setting of interpretation and regulation.

IV. Duty Remission Scheme On Imported Fabrics Into Canada

A new issue affecting basic equality of undertakings in this agreement has suddenly arisen. The Canadian government has proposed a duty remission program on third country imported fabric used in apparel production subsequently exported to the U.S. (and elsewhere). While the program details have not been spelled out nor anything put into effect it does indicate bad faith. Such a program would undercut any benefits the U.S. textile industry might receive from the agreement.

If such a direct export subsidy can be introduced by the Canadian government we wonder how many other ways the agreement equity can be undermined by cleverness and loopholes.

From our perspective, this U.S.-Canada free trade agreement is symbolic of the general policy of sacrificing manufacturing industries - especially labor intensive ones - for presumed gains in services and investment. We strongly question whether the value-added in the new jobs created even approximates that of the jobs that are being lost. We ask where will the million U.S. and thousands of Canadian apparel workers find alternative employment, given their general demographic, social and educational handicaps?

We think the Administration and the Congress ought to be spending its efforts in the trade area seeking to reduce the enormous trade deficit rather than negotiating agreements that may add even more to that deficit.

MAR 21 1988

March 10, 1988

Honorable Judd Gregg
308 Cannon House Office Building
Washington, D.C. 20515

Dear Judd,

Last week I was informed by Joel Marola, District Director of your Concord Office, that the House Ways and Means Committee on which you serve is now conducting hearings on the Ammerican-Canadian Free Trade Agreement. I will be unable to testify before your committee and instead am submitting this letter to you on behalf of the American Retreaders' Association (ARA). I would appreciate your submitting this letter on my behalf to Representative Dan Rostenkowski, Chairman of the House Ways and Means with the request that it be placed in the record of hearings on the Trade Agreement.

Since November of 1986, I have been serving as a consultant to the ARA working to include retread tires and materials in the Agreement. I am happy to report that ARA has been successful in its effort thus far since the Agreement includes as Item 4006.10.00 "Camel-back" strips for retreading rubber tires and Item 4012.10.50 retreaded or used pneumatic tires of rubber now submitted to a U.S. tariff of 4% and Canadian tariff of 10.3%. In the Agreement these duties included in staging category C in each Party's Schedule would be removed in ten equal annual stages commencing on January 1, 1989. See Attachment A. ARA would have preferred that the tariffs on retread tires be included in Schedule A calling for elimination of tariffs effective January 1, 1989.

By way of background, on December 2, 1986, I submitted on behalf of ARA, a letter to Ms. Carolyn Frank, Executive Secretary of the Trade Policy Staff Committee, Office of Trade Policy on Coordination of the Office of the U.S. Trade Representative. See Attachment B. In this letter, ARA requested that "the elimination of the 11.1% duty on retreads going into Canada from USA and the 4% duty on retreads coming into USA be placed on the negotiating table for consideration in the current talks now under way between U.S. and Canada."

Also in the letter I stated "We believe complete elimination of the duties on retread tires and retread materials in both U.S. and Canada would result in greater efficiency in the manufacture and distribution of retread tires in both countries. As an example, we cite the favorable experience of the American-Canadian Automotive Agreement which has worked so well over the past two decades."

Since October of 1986, I have made several trips to Washington, Toronto and Ottawa contacting staff members of the negotiating teams of both countries responsible for the trade talks. I have also been in contact with business leaders in both countries concerned with the Agreement. My most recent trip was to Toronto two weeks ago. There I conferred with the Chief Executive Officers of the Motor Vehicle Manufacturers Association of Canada and the Rubber Association of Canada.

Both persons told me that there is strong support in Canada in the industries they represent as well as most Canadian industries for approval of the Trade Agreement by the Canadian Parliament and the U.S. Congress.

Finally, on a personal note and as a citizen of the state you represent, I respectfully urge you to support the American Canadian Free Trade Agreement. My roots in both countries go back two centuries. My father came from Kingston, New Brunswick Canada to Boston in the 1890's. He married my mother who was a descendant of the family which settled Winthrop, Mass. My first trip to New Brunswick was when I was three years old. Since then I have gone to New Brunswick almost every year. I have owned the MacCleery Homestead in Kingston, N.B. for 50 years and am now spending a considerable part of each year in Canada. My next door cousin has spent his career as a member of Canada's Department of External Affairs in ambassadorial posts throughout the world.

As a result of this background going over many decades, I have become attuned to the great inter-dependence of USA and Canada. Both countries are each other's largest trading partners. Canada has vast natural resources important to our existence. Witness New Hampshire's increasing dependence on Canada's electric power. Witness the Chichester MacCleery Farm's dependence on Canadian potash to fertilize its fields of alfalfa, the price of which is being substantially increased this year due to USA's imposing a tariff last year on Canadian potash.

In closing, may I say that it is in the interests of consumers, industry business and international relations in both USA and Canada that Congress and the Canadian Parliament approve the Trade Agreement signed by President Reagan and Prime Minister Mulroney.

Sincerely yours,

Russell E. MacCleery

Russell E. MacCleery
Consultant to American Retreaders Assoc.

REM/hm

RETREADING
REPAIRING
American
Retreaders'
Association, Inc.

Mailing Ad
P.O. Box 1
Louisville, Kentucky 4

Shipping Ad
4466 Emberson Av
Louisville, Kentucky 4

Ph
(502) 367-

December 27, 1986

Ms. Carolyn Frank
Executive Secretary
Trade Policy Staff Committee
Office of Trade Policy Development
and Coordination
WWB Winder Building
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ms. Frank,

The American Retreaders Association (ARA) of Louisville, Kentucky includes in its membership, manufacturers of tire retread material, distributors and dealers of retread tires.

ARA has members in United States and Canada. Two of its members, Bandag Co. of Iowa and Oliver Co. of California operate plants in both countries which manufacture rubber used in the recapping of tires. There is now an 11.1% duty on retread tires going into Canada from USA and a 4% duty on retreads coming into USA from Canada. This differential in the duty on retread tires moving between the two countries coupled with the lower value of the Canadian dollar when compared with the American dollar are creating unfair competition for our retread tire dealers in USA particularly those who are located in the northern states bordering Canada.

In some instances we understand that retread tires have been trucked into USA on which the 4% duty has been paid but not the federal automotive excise tax on the casings which can go to 50¢ a pound on some large truck tires. In this instance, US Internal Revenue is not getting its share of such transactions. As a result, our US based retread tire dealers are subjected to severe competition from retread imports which are sold at lower prices because no federal excise tax has been paid on the original casing.

The differential in the duties on retreads in both countries also is disadvantageous to manufacturers of retread rubber in Canada and purchasers of their products including the final consumer such as truck owners and operators in US and Canada.

President
Terry Westhafer

Vice President
Tom Sumerel

Secretary-Treasurer
George McDaniel

Directors: Paul Clark, Tubby Hall, Melvin Huber, Joseph Kilcoyne, John Rainey, Austin Redmon, Gene Rosenfeld, Clarence Snow

Managing Director: E.J. Wagner

Directors Emeritus: Maurice Clapp and Russel Zuker

We believe that complete elimination of the duties on retread tires and retread materials in both US and Canada would result in greater efficiency in the manufacture and distribution of retread tires in both countries. As an example, we cite the favorable experience of the American-Canadian Automotive Agreement which has worked so well over the past two decades.

Therefore, we respectfully request that the elimination of the 11.1% duty on retreads going into Canada from USA and the 4% duty on retreads coming into USA be placed on the negotiating table for consideration in the current talks now under way between US and Canada. We understand that the next step in the attempt to bring about free trade between the two countries will take place when negotiating teams of US and Canada meet in late January of 1987.

Please let us know if we can be of assistance in furnishing you information needed in the review of the foregoing matter.

Sincerely yours,

Russell E. MacCleery

Russell E. MacCleery
Consultant to American
Retreaders' Association
R 2 - Chichester, N.H. 03263
Phone (603)798-5204

REM/hm

Item	Article description	Base rate	Staging Category
4002	Synthetic rubber and factice derived from oils, in primary forms or in plates, sheets or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip:		
	Styrene-butadiene rubber (SBR); carboxylated styrene-butadiene rubber (XSBR):		
4002.11.00	Latex	Free	D
4002.19.00	Other	Free	D
4002.20.00	Butadiene rubber (BR)	Free	D
	Isobutene-isoprene (butyl) rubber (IIR); halo-isobutene-isoprene rubber (CIIR or BIIR):		
4002.31.00	Isobutene-isoprene (butyl) rubber (IIR)	Free	D
4002.39.00	Other	Free	D
	Chloroprene (chlorobutadiene) rubber (CR):		
4002.41.00	Latex	Free	D
4002.49.00	Other	Free	D
	Acrylonitrile-butadiene rubber (NBR):		
4002.51.00	Latex	Free	D
4002.59.00	Other	Free	D
4002.60.00	Isoprene rubber (IR)	Free	D
4002.70.00	Ethylene-propylene-nonconjugated diene rubber (EPDM)	Free	D
4002.80.00	Mixtures of any product of heading 4001 with any product of this heading	Free	D
	Other:		
4002.91.00	Latex	Free	D
4002.99.00	Other	Free	D
4003.00.00	Reclaimed rubber in primary forms or in plates, sheets or strip	Free	D
4004.00.00	Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom	Free	D
4005	Compounded rubber, unvulcanized, in primary forms or in plates, sheets or strip:		
4005.10.00	Compounded with carbon black or silica	Free	D
4005.20.00	Solutions; dispersions other than those of subheading 4005.10	Free	D
	Other:		
4005.91.00	Plates, sheets and strip	Free	D
4005.99.00	Other	Free	D
4006	Other forms (for example, rods, tubes and profile shapes) and articles (for example, discs and rings), of unvulcanized rubber:		
4006.10.00	"Camel-back" strips for retreading rubber tires	5.8%	~~A~~ C
4006.90	Other:		
4006.90.10	Of natural rubber	4.2%	C
4006.90.50	Other	5.3%	C
4007.00.00	Vulcanized rubber thread and cord	4.2%	C
4008	Plates, sheets, strip, rods and profile shapes, of vulcanized rubber other than hard rubber:		
	Of cellular rubber:		
4008.11	Plates, sheets and strip:		
4008.11.10	Of natural rubber	4.2%	C
4008.11.50	Other	6.6%	C
4008.19	Other:		
4008.19.10	Of natural rubber	4.2%	C
4008.19.50	Other	6.6%	C

Item	Article description	Base rate	Staging Category
4012	Retreaded or used pneumatic tires of rubber; solid or cushion tires, interchangeable tire treads and tire flaps, of rubber:		
4012.10	Retreaded tires:		
4012.10.10	Aircraft	Free	D
4012.10.20	Designed for tractors provided for in subheading 8701.90.10 or for agricultural or horticultural machinery or implements provided for in chapter 84 or in subheading 8716.80.10	Free	D
4012.10.50	Other	4%	C
4012.20	Used pneumatic tires:		
4012.20.10	Aircraft	Free	D
4012.20.20	Designed for tractors provided for in subheading 8701.90.10 or for agricultural or horticultural machinery or implements provided for in chapter 84 or in subheading 8716.80.10	Free	D
4012.20.50	Other	4%	C
4012.90	Other:		
4012.90.10	Solid or cushion tires	Free	D
	Other:		
4012.90.20	Of natural rubber	4.2%	C
4012.90.50	Other	5.3%	C
4013	Inner tubes, of rubber:		
4013.10.00	Of a kind used on motor cars (including station wagons and racing cars), buses or trucks	3.7%	C
4013.20.00	Of a kind used on bicycles	15%	C
4013.90	Other:		
4013.90.10	Designed for tires provided for in subheadings 4011.91.10, 4011.99.10, 4012.10.20 and 4012.20.20	Free	D
4013.90.50	Other	3.7%	C
4014	Hygienic or pharmaceutical articles (including nursing nipples), of vulcanized rubber other than hard rubber, with or without fittings of hard rubber:		
4014.10.00	Sheath contraceptives	4.2%	C
4014.90	Other:		
4014.90.10	Nursing nipples	3.1%	C
4014.90.50	Other	4.2%	C
4015	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber:		
	Gloves:		
4015.11.00	Surgical and medical	3.7%	C
4015.19	Other:		
4015.19.10	Seamless	3.7%	C
4015.19.50	Other	14%	C
4015.90.00	Other	5%	C
4016	Other articles of vulcanized rubber other than hard rubber:		
4016.10.00	Of cellular rubber:		
A	If certified for use in civil aircraft (see additional U.S. note 1, chapter 88)	Free	D
B	Other	4.2%	C

STATEMENT OF THE
. AMERICAN TEXTILE MANUFACTURERS INSTITUTE
CARLOS MOORE, EXECUTIVE VICE-PRESIDENT

This statement is submitted by the American Textile Manufacturers Institute (ATMI) on behalf of its member firms. ATMI's members account for more than 85 percent of the volume of the domestic textile mill products industry. ATMI wishes to register its opposition to the proposed United States - Canada Free Trade Area (FTA) agreement now pending before Congress for the reasons set forth below.

As constituted, the United States - Canada Free Trade Area is unlikely to yield a net economic benefit to the American textile industry. In exchange for granting the United States increased access to a Canadian market of 26 million population and an apparel manufacturing industry which consumes 680 million square yards of fabric annually (1), the United States has granted Canada increased access to a market of 244 million population and an apparel industry which consumes 9 billion square yards of fabric annually (1). Clearly, true reciprocity and balanced trade flows are not possible in such an environment. Rather, trade flows in textile mill products are most likely to be in Canada's favor, thus exacerbating the U.S. trade deficit in textile products.

While these prospects are troubling to American textile firms, of much greater concern are recent unilateral actions announced by the government of Canada (GOC) which are in direct countradiction and, in ATMI's view, violation, of the spirit, intent and objectives of the FTA agreement. This concern is fostered by a promise made by the GOC to grant Canadian apparel manufacturers duty remissions on fabric imported from any country, not just the United States. This promise is contained in a letter written by Robert de Cotret, Canadian Minister of Regional Industrial Expansion, a copy of which is attached to this statement.

Before commenting further on the implications of this wholly untenable proposal, it would be useful to first consider the extremely generous concessions which have already been granted the Canadian industry in the FTA agreement. In addition to the greater market access which Canada gains, described above, the agreement also permits Canada to ship annually to the United States 56 million square yards equivalent (SYE) of apparel made from fabric produced in countries other than the U.S. or Canada. As Minister de Cotret's letter points out, this is six times (emphasis added) as much apparel made from third country fabric as Canada has ever exported to the U.S. In return, American apparel firms are permitted to export to Canada 11.6 million SYE annually of apparel made from third country fabric.

In addition, Canada is permitted to export to the U.S., under the conditions of the FTA, 30 million square yards annually of textile mill products woven or knitted from yarns produced in third countries. This latter derogration from the origin rules incorporated in the agreement cannot be defended; it is an outright concession by the United States.

Finally, language was incorporated into the agreement, at the insistence of Canada, to ensure that apparel made in Canada from third country fabric and exported to the United States could enjoy permanent duty drawback. All these exceptions to and derogations from the principle of a balance of bilateral concessions are, by themselves, sufficent to ensure that the Canadian industry will benefit handsomely from the arrangement, but such exceptions are apparently not sufficient to satisfy those Canadian interests who seek to turn the FTA to their exclusive advantage.

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(1) 1986 consumption

The duty remission scheme envisioned in Minister de Cotret's letter permits the importation into Canada of apparel fabric produced in China, South Korea, Brazil, Taiwan, Indonesia, India, Pakistan or any other country on the same duty-free basis as fabic produced in the United States. Many of these countries who would now be granted equivalent access to the Canadian market as American producers are proven subsidizers and/or dumpers of their textile exports. Worse still, none of these countires has been or will be required to grant the same kind of reciprocal access to their markets as the United States had to grant Canada in the FTA. All these countries will receive a free ride into the Canadian market on the backs of American textile firms and their workers. This assures that the United States, the only (emphasis added) country that has negotiated on FTA with Canada will have any advantages that duty-free access to the Canadian market provides for American textile products completely eliminated by the duty remission scheme. In an FTA environment American textile producers will have granted Canadian textile companies duty-free access to the U.S. market on a preferential basis but will be denied reciprocal treatment by Canada. Any potential increase in U.S. fabric exports to Canada in an FTA environment will thus be eliminated. This prospect, which is more than likely to succeed if the proposed Canadian duty remission scheme is effected, is completely untenable. Furthermore, the duty remission scheme envisioned in Minister de Cotret's letter is tantamount, by Canadian officials' own admission, to a $200 million annual subsidy to the Canadian apparel industry, an outrageous proposition.

In the preamble to the agreement itself the governments of the United States and Canada resolve:

"To promote productivity, full employment and a steady improvement of living standards in their respective countries;

To create an expanded and secure market for the goods and services produced in their territories;

To reduce government-created trade distortions ..." (emphases added)

Much of this same language was incorporated by President Reagan in his joint announcement with Prime Minister Mulroney when they officially signed the agreement. The proposed Canadian duty remission scheme for textile products makes a mockery of these high-sounding principles and renders the FTA essentially worthless to American textile firms.

ATMI earnestly and urgently requests the Congress to withhold approval of the U.S.-Canadian FTA if any duty remission or similar programs which were not in force prior to October 4, 1987 are instituted or announced by the Government of Canada. ATMI must oppose this agreement, whose terms have been significantly modified unilaterally by the Government of Canada to the detriment of the American textile industry and its 700,000 workers.

STATEMENT ON BEHALF OF
AMERICAN WIRE PRODUCERS ASSOCIATION
BY ROBERT T. CHANCLER, MANAGING DIRECTOR

HEARINGS ON THE UNITED STATES-CANADA FREE TRADE AGREEMENT BEFORE THE SUBCOMMITTEE ON TRADE, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES

MARCH 1, 1988

On behalf of the American Wire Producers Association, I respectfully submit our views on the United States-Canada Free Trade Agreement ("FTA").

The American Wire Producers Association is a national trade organization which represents independent American-owned and -operated manufacturers of carbon, alloy, and stainless steel wire and wire products. Our membership also includes integrated and mini-mill producers of steel wire rod, wire drawers related to domestic rod producers, wire drawers related to foreign steel companies, and suppliers of machinery and other equipment to our industry. Member companies of the Association operate more than 110 plants in 27 states, and they employ over 20,000 American workers. Our members are efficient producers with modern facilities and a productive labor force. They supply more than 70 percent of the domestic market for steel wire and wire products, including round and flat wire, barbed wire, threaded bars, welded wire fabric, wire rope and strand, nails, staples, chain, coat hangers, concrete reinforcing mesh, and chain link fence.

The Association is concerned that the goals and benefits of the FTA may be undermined by certain imbalances in current trade relations between the United States and Canada. We urge that these imbalances be redressed prior to or concurrently with the implementation of the FTA.

First, the imbalance in the currency exchange rate between the United States dollar and its Canadian counterpart bestows an automatic and unfair price advantage on Canadian exporters of steel wire and wire products.[1] On February 26, 1988, for example, the spot value of the Canadian dollar was only 79.15 U.S. cents. (The Washington Post, February 27, 1988, p. B3.) Although American wire producers are efficient and competitive in the world marketplace, it will be virtually impossible to compensate for such a radical price discrepancy caused by the depressed value of the Canadian dollar.

Second, the implementation of the FTA may undermine the objectives of the program of voluntary restraint arrangements ("VRA's") negotiated with other steel-exporting countries. Third-country producers of wire rod -- the semi-finished steel product from which wire and wire products are manufactured -- will have an incentive to ship their excess tonnages to Canadian wire drawers, who are not affected by VRA limitations and who will have duty-free access to the American market for wire products. Further, Canadian wire drawers will be able to purchase wire rod unburdened by any import limitations, whereas our industry will continue to be confronted by the price increases and periodic shortages which are the inevitable consequences of VRA restrictions. Thus, the availability of third-country production and prices will confer an unfair advantage on Canadian producers and exporters of wire and wire products.

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[1] These articles are classified generally under Item Number 609.20 through 609.76, 642.02 through 642.97, and 646.02 through 646.79 of the Tariff Schedules of the United States Annotated (1987), and under headings 7217, 7223, 7229, 7312 through 7315, and 7317 of the proposed Harmonized Tariff Schedule of the United States (1988).

Third, the rules of origin contained in Chapter Three of the FTA provide in Section XV of Annex 301.2 that steel wire products manufactured in Canada from imported steel wire rod will be eligible for duty-free treatment under the FTA. Tables A through D, attached hereto, show that Canada already enjoys an overwhelming balance-of-trade surplus with the United States on carbon, alloy, and stainless steel wire and wire products. The wire products are listed under Items 3 through 7. The rules of origin will surely exacerbate the existing imbalance in trade on steel wire products by encouraging the shipment of steel wire rod from third countries into Canada for processing or conversion into wire products for eventual shipment to the United States on a duty-free basis. We respectfully urge that the rules of origin for steel wire products be amended to conform with the rules of origin for steel wire so that wire products manufactured from imported steel wire rod will not be entitled to duty-free treatment under the FTA.

Fourth, the Association notes that Canada started the FTA negotiations with an unfair advantage and that the schedule for staged reductions in import duty rates perpetuates this advantage. That is, Canada generally imposes a much higher level of duty rates on imported wire and wire products than does the United States. The respective rates of the two countries are listed on Table E, attached hereto. The schedule for staged tariff rate reductions should be accelerated for Canada so that the higher Canadian rates are first reduced to the lower United States rates before mutual staged reductions take place.

We respectfully urge the Subcommittee on Trade to require that the legislation implementing the FTA correct these imbalances prior to or concurrently with the implementation of the FTA. As noted above, the members of the Association support efforts which will lead to the free and fair exchange of goods between the United States and our trading partners, including Canada. At the same time, however, our members are concerned about the imbalances in current bilateral trade relations with Canada, and they ask that these imbalances be redressed as an indispensable part of the creation of a free trade regime between our two countries.

Respectfully submitted,

R T Chancler
Robert T. Chancler
Managing Director

TABLE A

BALANCE OF UNITED STATES-CANADA TRADE IN CARBON, ALLOY AND STAINLESS STEEL WIRE AND WIRE PRODUCTS

1984

	Product Category	U.S. Exports to Canada ($US 1,000)	U.S. Imports from Canada ($US 1,000)	Surplus (+) Deficit (-) ($US 1,000)
1.	Carbon & Alloy Wire	10,283	99,801	-89,518
2.	Stainless Wire	2,352	5,478	- 3,126
3.	Nails	8,618	45,792	-37,174
4.	Wire Rope	2,400	6,936	- 4,536
5.	Wire Strand	925	4,400	- 3,475
6.	Welded Wire Mesh for Concrete Reinforcement	217	2,937	- 2,720
7.	Wire Cloth, Etc.	544	2,763	- 2,219
	TOTAL	$25,339	$168,107	-$142,768

SOURCE: Statistics compiled by the American Iron and Steel Institute.

TABLE B

BALANCE OF UNITED STATES-CANADA TRADE IN CARBON, ALLOY AND STAINLESS STEEL WIRE AND WIRE PRODUCTS

1985

	Product Category	U.S. Exports to Canada ($US 1,000)	U.S. Imports from Canada ($US 1,000)	Surplus (+) Deficit (-) ($US 1,000)
1.	Carbon & Alloy Wire	9,759	97,711	-87,952
2.	Stainless Wire	1,839	4,643	- 2,804
3.	Nails	8,346	50,424	-42,078
4.	Wire Rope	1,928	7,506	- 5,578
5.	Wire Strand	721	3,774	- 3,053
6.	Welded Wire Mesh for Concrete Reinforcement	248	3,748	- 3,500
7.	Wire Cloth, Etc.	724	3,836	- 3,112
	TOTAL	$23,565	$171,642	-$148,077

SOURCE: Statistics compiled by the American Iron and Steel Institute.

TABLE C

BALANCE OF UNITED STATES-CANADA TRADE IN CARBON, ALLOY AND STAINLESS STEEL WIRE AND WIRE PRODUCTS

1986

	Product Category	U.S. Exports to Canada ($US 1,000)	U.S. Imports from Canada ($US 1,000)	Surplus (+) Deficit (-) ($US 1,000)
1.	Carbon & Alloy Wire	$ 9,232	108,774	-99,542
2.	Stainless Wire	1,815	6,594	- 4,779
3.	Nails	13,488	62,594	-49,106
4.	Wire Rope	1,455	5,620	- 4,165
5.	Wire Strand	858	3,842	- 2,984
6.	Welded Wire Mesh for Concrete Reinforcement	120	3,400	- 3,280
7.	Wire Cloth, Etc.	653	7,505	- 6,852
	TOTAL	$27,621	$198,329	-$170,708

SOURCE: Statistics compiled by the American Iron and Steel Institute.

TABLE D

BALANCE OF UNITED STATES-CANADA TRADE IN CARBON, ALLOY AND STAINLESS STEEL WIRE AND WIRE PRODUCTS

January - October 1987

	Product Category	U.S. Exports to Canada ($US 1,000)	U.S. Imports from Canada ($US 1,000)	Surplus (+) Deficit (-) ($US 1,000)
1.	Carbon & Alloy Wire	11,086	87,834	-76,748
2.	Stainless Wire	1,709	5,755	- 4,046
3.	Nails	14,178	51,844	-37,666
4.	Wire Rope	2,024	8,270	- 6,246
5.	Wire Strand	1,282	3,664	- 2,382
6.	Welded Wire Mesh for Concrete Reinforcement	347	2,457	- 2,110
7.	Wire Cloth, Etc.	751	5,884	- 5,133
	TOTAL	$31,377	$165,708	-$134,331

SOURCE: Statistics compiled by the American Iron and Steel Institute.

TABLE E

COMPARISON OF DUTY RATES ON
SELECTED CARBON STEEL WIRE AND WIRE
PRODUCTS, UNITED STATES AND CANADA

	Product	United States (Column 1 Rate)	Canada (M.F.N. Rate)
1.	Barbed Wire	Free	7.2%
2.	Wire, flat, not coated	3.2 - 5.1%	7.3%
3.	Wire, flat, coated	4.2 - 5.2%	7.3%
4.	Wire, round, coated and not coated	1.5 - 5.3%	5.8 - 7.3%
5.	Wire strand	4.9%	9.9%
6.	Wire rope, uncoated	3.5 - 4.0%	7.2 - 9.9%

Source: Tariff Schedules for the United States Annotated (1987), Schedule 6, Subparts 2B and 3B; McGoldrick's Canadian Customs and Excise Tariffs (1985 ed.).

TESTIMONY BY ROBERT L. MCPHAIL, GENERAL MANAGER OF BASIN ELECTRIC POWER COOPERATIVE OF BISMARCK, NORTH DAKOTA ON THE UNITED STATES-CANADA FREE TRADE AGREEMENT BEFORE THE WAYS AND MEANS COMMITTEE OF THE U.S. HOUSE OF REPRESENTATIVES AT FARGO, NORTH DAKOTA

MARCH 11, 1988

Basin Electric is a consumer-owned regional power supply cooperative supplying supplemental wholesale power to 118 rural electric member systems serving one million consumers in the eight states of Colorado, Iowa, Minnesota, Montana, Nebraska, North Dakota, South Dakota and Wyoming. Basin Electric owns and operates approximately 2400 MW of generation for these members and manages approximately 950 MW for participants in a joint power supply project.

We have had an opportunity to review the final text of the Canada-United States Free Trade Agreement and have subsequently become concerned about a section we believe will have a critically adverse effect on Basin Electric's ability to market our surplus electricity to existing customers in Northern California when our contract expires in 1990. We believe this agreement will force the termination of Basin's sales to California which currently amount to about $45 million per year.

Specifically, we are concerned with Paragraph 2 in Annex 905.2 Regulatory and Other Measures on page 92. That Paragraph states "The United States of America shall cause the Bonneville Power Administration (Bonneville) to modify its Intertie Access Policy so as to afford British Columbia Hydro (B.C. Hydro) treatment no less favourable than the most favourable treatment afforded to utilities located outside the Pacific Northwest".

The obvious purpose of this provision is to provide B.C. Hydro access to the substantial California markets for surplus electricity. Because of the geographic proximity of B.C. Hydro to this market, this provision means that B.C. Hydro will have preferential access to these markets to the detriment of United States utilities located outside the Pacific Northwest.

The "Intertie Access" referenced in this section refers to access to and the right to use the transmission lines linking the Pacific Northwest to the markets of California. These facilities are owned, in most part, and access to them is controlled by Bonneville. Basin Electric currently has a contract with the Western Area Power Administration (Western) under which Basin Electric sells 185 MW of capacity and energy from its North Dakota Antelope Valley Station, which is delivered to Western's loads in Northern California.

Western has a contract with Bonneville to utilize the Intertie for this delivery. Basin Electric's contract with Western expires in October of 1990, after which Basin Electric will have 185 MW of additional surplus capacity and energy to market. Our total surplus capacity and energy available at that point in time is estimated to be 1,000 megawatts, enough to serve about 1 million residential consumers.

One potential market for this surplus would be California, if appropriate transmission arrangements, including intertie access, could be arranged. To-date all attempts by Basin Electric to gain transmission access from Bonneville beyond October, 1990, have been unsuccessful.

The topic of Intertie Access has been very controversial in the Pacific Northwest and Bonneville has been working several years to develop an Intertie Access Policy. In October of 1986, they published a proposed Long-Term Intertie Access Policy, after which they held hearings and received comments from the public. Then in December of 1987 they issued a Revised Draft Long-Term Intertie Access Policy. The policy is scheduled to go into effect in May of 1988. After this exhaustive study, Bonneville has formulated a policy which they believe is best for the Bonneville system, and which Basin Electric believes properly addresses Intertie Access for Canadian Utilities. A copy of that policy has been attached for your information, but in summary Section 6.(a) provides for assured delivery for Canada only after Bonneville determined that the intertie capacity was rated at 7,900 MW. In addition, under Section b. Canadian Utilities would have access to intertie capacity for short-term sales only when there is capacity excess to the amount used by Bonneville, Scheduling Utilities and U.S. Qualified Extra-regional Utilities.

It is apparent that B.C. Hydro is attempting to achieve through the Free Trade Agreement what it was unable to achieve in the development of the Intertie Access Policy, i.e., preferential access to the Federal Government's transmission system. While purporting to ask for equal treatment with respect to transmission access, it is, in fact, preferential. The vast hydro sources of B.C. Hydro and its close proximity to the intertie and the California market clearly would make other utilities in the United States, which are geographically remote, at a competitive disadvantage. In fact, by so doing, the United States would be turning over to a corporation owned by another country, access to transmission facilities paid for by American taxpayers and thus restricting potential sales by other utilities located in the United States.

It should be noted that one potential user of the intertie is Western, a power marketing agency of the Department of Energy, and a sister Federal agency of Bonneville. Since Western has no preferential status under the Intertie Access Policy, this language in the Free Trade Agreement would in effect give B.C. Hydro the same, if not better, access potential than Western. It is difficult to understand why that type of an arrangement is in the best interest of the Unites States of America.

It is obvious that this language was agreed to at the 11th hour by an Administration anxious to sign a Free Trade Agreement at any cost. Basin Electric does not oppose the objective of free trade, but when it comes to free trade in electrical energy, free trade should also be fair trade. This attempt to bypass the Intertie Access Policy being prepared by Bonneville is not fair trade and should be dealt with accordingly.

Basin Electric is concerned about maintaining a stable rate base for its members in light of the depressed rural economy which persists throughout our service area. An important factor in maintaining rate stability for our one million consumers is being able to market surplus capacity and energy. This lanquage in the trade agreement would reduce the chance of efficiently marketing our surpluses and could raise the electric rates to our consumers.

Accordingly, because of the overall potential deleterious effects of this trade agreement to Basin Electric and its one million consumer members in the Great Plains, and because it is our understanding that the agreement cannot be altered in any substantive way but must be either approved or rejected by the U.S. Congress, we join with the farm groups, commodity marketing groups, other energy industries and a number of neighboring states which request that the United States-Canada Free Trade Agreement be rejected in its present form as detrimental to vital United States interests.

Harry B. Endsley, Esq.

Executive Director

California Council for International Trade

STATEMENT

This statement is submitted on behalf of the California Council for International Trade ("CCIT") in support of the Canada-U.S. Free Trade Agreement ("FTA"). CCIT is California's largest statewide private sector association devoted to the healthy expansion of international commerce. Our members include some 800 business leaders in the agriculture, manufacturing, trade, and services sectors and, as such, CCIT is one of the most broadly representative international business organizations in the state of California. CCIT is active throughout the state.

To understand the importance CCIT places upon the successful conclusion and implementation of the FTA, it would be helpful to note the significance of our bilateral trade relationship with Canada. In 1985, the Canada-U.S. bilateral merchandise trade totaled U.S.$125 billion (exports plus imports), compared to $88 billion between the United States and Japan, and $108 billion between the United States and the (then) 10 members of the European Community. In the two years 1984-85, Canada bought 22 percent of U.S. exports, or more than twice as much as second-placed Japan. On a *per capita* basis, Canadian purchases of U.S. goods and services are more than 10 times higher than those made by Japan and the EC.

Canada's relationship with the state of California is of commensurate importance. In 1985, for example, California's two-way trade with Canada totaled approximately U.S. $6.4 billion, which sum was relatively evenly balanced between exports and imports. California's two-way trade with Canada is also extremely diverse, reflecting the diverse nature of the two economies. California's leading industries enjoy full participation in this trade -- in 1985, 36 percent of California's exports to Canada were in the high technology sector; 16 percent in food products; 11 percent in transportation equipment; etc. Each of these sectors will benefit from liberalized trade and many industries, depending on the nature of existing Canadian restraints, will benefit greatly. It is also worth stressing that although greater access to the Canadian market may not make a great difference to the *average* California firm, it could be extremely important for the *specialized* firms that occupy specific market niches. Since California is richly endowed with these types of companies, we expect California to in fact derive a *special benefit* from the implementation of the FTA.

Clearly, for Canada, the trade partnership with the United States is immensely important. Merchandise exports constitute a full 25 percent of Canadian GNP, with almost 80 percent of these exports going to the United States. Approximately one in five jobs in Canada depends on trade with the United States. Economists estimate that Canada's GNP will be higher by 2 to 5 percent because of the FTA. The statistical impact on the United States of the FTA will, of course, be smaller but will still be significant. The key, however, is not whether the gains between the United States and Canada are *equal*-- given the difference in size between the two economies, the gains could never be equal. The key is whether the net effects of the agreement on both countries is *positive*, and we have no hesitancy in saying that they *will* be positive, for the United States as a whole and for California in particular.

We should also note that, from a macroeconomic standpoint, bilateral free trade between the United States and Canada will almost certainly contribute to the overall efficiency of *both* economies, and to their competitiveness in facing overseas producers. Access to a larger market will allow their respective producers to specialize and gain the advantages of large-scale production. A larger North American "home" base for our major firms will improve the ability of these firms, both U.S. and Canadian, to export into the increasingly competitive world market and to meet the competition of imports from overseas. California firms often bear the brunt of such foreign competition and will clearly be strengthened in their efforts by the efficiencies which bilateral free trade will bring to their operations.

Present circumstances are such that we now enjoy a window of opportunity to consummate a free trade agreement with Canada and, if missed, this opportunity may not soon recur. The failure to agree on freer trade could well cause the pendulum to swing in the opposite direction, toward a more nationalist economic policy in Canada, and to the detriment, as well, of the multilateral negotiations currently taking place in Geneva.

CCIT believes that the proposed FTA will be of unquestioned benefit to California and that these benefits fully justify the implementation of the agreement. We will cite just a few sectors of the agreement in support of this view:

- **Agriculture**: A series of important liberalizing measures have been agreed upon in the FTA, all of which will benefit California's agricultural interests. These benefits include the removal of all current tariffs; the elimination of various import licenses; greater discipline in the use of subsidies; an increase in certain Canadian import quotas; and the removal of various rules and regulations which have heretofore impacted agricultural trade with Canada.

- **Alcoholic Beverages**: California wines and related products should benefit greatly from the elimination of discriminatory pricing and listing practices, particularly those that are in place at the provincial level, and increased access to distribution and marketing networks in Canada.

- **Energy**: U.S.-Canada trade in energy is already the largest in the world and the value of trade in this sector will almost certainly expand as a result of the FTA. In 1985, Canada supplied California with 21% of its natural gas requirements, making California the largest importer of Canadian natural gas. Continued nondiscriminatory access to Canadian energy supplies will obviously be of great importance to this state. The removal of tariffs and the prohibition of quotes and other types of restraints will benefit both Canada and California.

- **Financial Services**: While the governments did not reach final agreement concerning the treatment of their respective financial institutions, the FTA is nevertheless a remarkable accomplishment in that it is the first bilateral agreement of the United States covering the entire financial sector. California should stand to reap enormous benefits from this aspect of the agreement, since the FTA will free the restrictions currently placed on California banks in Canada; allow California insurance firms to greatly expand the scope of their activities in Canada; and allow California securities firms to enter the Canadian securities markets subject only to standard types of review to ensure fiduciary responsibilities.

o **Other Services**: Although U.S.-Canada services trade is already conducted in a relatively open environment, California will clearly benefit by the rights of commercial establishment and national treatment provided for in the FTA. California service firms lead the nation and we note that more than 50 service industries are covered by the services chapter rules. The annexes to the FTA, which clarify the application of the rules to architecture, tourism, and telecommunications and computer services, will also have an important impact on leading California industries.

o **Government Procurement**: Clearly, Canadian government entities have been, and will continue to be, important customers for California companies. The FTA will be opening a much larger segment of this market to participation by California suppliers; indeed, purchases totaling U.S. $25,000 and above by agencies covered by the GATT Government Procurement Code will now be subject to FTA procurement rules. Previously, some 60 percent of procurements by these Canadian agencies were below the current GATT Procurement Code threshold of U.S. $171,000. Government procurement policies may be the most important non-tariff barrier impacting trade between the United States and Canada and the FTA has made important progress towards eradicating this obstacle.

o **Investment**: Canadian and California companies are already major investors in each other's territory. Commitments made by Canada in the FTA to (i) continue its present policy of not screening new investments; (ii) reduce the screening of direct acquisitions and divestitures; and (iii) phase out the screening of indirect investments are important commitments and will clearly benefit California companies as they continue to internationalize their operations.

o **Tariffs**: Despite the fact that about three-fourths of U.S.-Canada trade flows duty-free, tariffs are still a major obstacle to sales for a number of product categories. Numerous California producers and manufacturers will benefit from the elimination of Canadian tariffs. Judging from the experience of the 1965 U.S.-Canada Auto Pact, these benefits could be significant indeed. Since 1965, when the Auto Pact introduced duty-free trade in new automobiles and original-equipment parts, bilateral trade in these items has increased sharply, from an annual average of $625 million in 1963-64 to an annual average of $42 billion in 1984-85. In trade terms, tariffs -- even low tariffs -- clearly do matter, and CCIT believes that the elimination of tariffs in the FTA will prove to be one of its most significant and lasting accomplishments.

- **Other Sectors:** The above comments address only a few of the subject areas of the FTA. CCIT believes, however, that California companies will benefit from the remaining sections of the agreement as well, including the understandings reached regarding dispute settlement, intellectual property, quantitative restrictions, safeguards, standards, subsidies, etc. The FTA makes significant improvements in each of these areas, many of which may also have a profoundly beneficial effect on the multilateral trade negotiations going on in Geneva.

CCIT recognizes that not every company, nor every industry, will benefit from the implementation of the FTA. Nevertheless, through adjustment assistance programs and other efforts, the United States can assist those domestic industries that may be adversely impacted by the FTA. The fact that the benefits of the FTA may, in some cases, be unevenly distributed across the economy simply cannot be utilized as an excuse to turn away from this historic opportunity. It is historic in the same sense as the formation of the European Community was historic and will have profound implications for North American trade as it will for the successful outcome of the Uruguay Round.

It is also worth stressing that the recent downturn in the stock market has made our economic future more uncertain and problematical than it was just a short time ago. This is clearly the time for Congress to set aside parochial concerns and take all appropriate steps that will *enhance*, and thus *strengthen*, the United States economy. Without question, the FTA with Canada will increase the overall level of trade within the United States, perhaps substantially so, which will inevitably serve to enhance our economic strength as well.

For all of the above reasons, we urge that Congress approve and implement the FTA in accordance with its terms.

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U.S./CANADA FREE TRADE AGREEMENT

PLYWOOD STANDARDS

COMMENTS OF THE PLYWOOD INDUSTRY MEMBERS OF THE COUNCIL OF FOREST INDUSTRIES OF BRITISH COLUMBIA

APRIL 1, 1988

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U.S./CANADA FREE TRADE AGREEMENT
PLYWOOD STANDARDS
COMMENTS OF THE PLYWOOD INDUSTRY MEMBERS OF THE COUNCIL OF FOREST INDUSTRIES OF BRITISH COLUMBIA
April 1, 1988

I. Introduction

The dispute about the differences between Canadian and U.S. plywood standards is longstanding. In the Tokyo Round of GATT negotiations, the U.S. and Canada agreed to reduce their plywood tariffs if satisfactory progress could be made on developing a common North American plywood standard. However, an evaluation by the plywood industries of both countries in 1981 resulted in their agreement that there was "no economically viable ground for the development of a common set of [plywood] standards for the two countries". Subsequent development of U.S. and Canadian plywood performance standards were seen by the two industries as the best way to resolve this problem. The Canadians expect to complete their performance standard in time for inclusion in the next version of the Canadian building code in 1990.

The U.S./Canada Free Trade Agreement (FTA) provides for the reduction over 10 years of U.S. and Canadian tariffs on plywood (currently 20 percent in the U.S. and 15 percent in Canada). It also requires that the Canada Mortgage and Housing Corporation (CMHC) will evaluate C-D grade plywood and decide whether to approve its use in housing financed by CHMC. The FTA provides that if CMHC approval is not granted, the tariff reduction will not begin until the CHMC evaluation is reviewed by "an impartial panel of experts acceptable to both parties." If the panel agrees that the CHMC evaluation is unbiased and technically accurate, the tariff reductions will begin. If the panel does not agree with CHMC, the U.S. may delay its plywood tariff reductions, in which case Canada may also delay its tariff reductions.

The CHMC recently completed its evaluation of U.S. C-D grade plywood and was unable to accept its use in CHMC financed housing on the basis of the evidence submitted to it. It recommended continued work on a performance standard as the solution to the problem of inconsistent U.S. and Canadian plywood standards.

On March 15 the APA urged the U.S. Government to delay the tariff reductions without even proceeding with the bilateral review process contained in the FTA "until such time as the standards issue between the U.S. and Canada is satisfactorily resolved."

The APA's objective thus appears to be either to prevent the tariff reductions or to use the FTA as a weapon to convince Congress to force Canada to reduce its standards for construction sheathing grade plywood.

In pressing its case, the APA has made several factual misstatements, three of which are particularly eggregious and which are known by APA to be wrong.

1. The Canadian market is closed to U.S. by Canadian plywood standards;

2. The purpose of the Canadian construction sheathing standards is to exclude U.S. plywood from Canada; and

3. Canada's justification for its stricter standards is its harsher climate.

Each of these claims is totally unfounded.

II. The Canadian Plywood Market Is Not Closed To U.S. Plywood

A. Two-Thirds of Canadian Market Totally Open To U.S.

There is no significant plywood trade between the U.S. and Canada today because of high tariffs in both countries, not because of any nontariff barrier to trade. The tariffs, 20 percent in the U.S. and 15 percent in Canada, prevent trade in plywood except in unusual circumstances. Trade in plywood only occurs between the U.S. and Canada when relative price differences in the two countries are sufficient to overcome the tariff levels, or when there is a plywood industry strike in either country.

Although the impression it creates is that the entire Canadian plywood market is closed to U.S.producers, the APA is only claiming that the Canadian construction market is closed. APA is only objecting to Canadian building code standards for construction sheathing, which is used for roofs and floors in buildings.

However, two-thirds of the Canadian market for plywood is not construction sheathing, is therefore not subject to such code standards, and is now fully open to U.S. plywood, including U.S. C-D grade plywood.

In 1987, 2.7 billion square feet (calculated on a 3/8 inch basis) of wood panel was used in Canada: 1.9 billion of plywood and .8 billion of waferboard and oriented strand board. Of the 2.7 billion sq.ft. of wood panel, at most 1 billion sq.ft. was used for construction sheathing. Thus, only 37 percent of the total Canadian market for wood panels such as plywood is subject to Canadian building codes. The other 63 percent is not subject to the building codes that the APA claims close the Canadian plywood market to U.S. producers.

The 63 percent that is not subject to any Canadian code standard requirement is used for: home use, industrial uses (such as shipping containers), construction area barriers, other miscellaneous temporary structures, concrete forms, and cabinetry.

B. Remainder of the Canadian Market Open If The U.S. Grades to Canadian Standards

The U.S. plywood industry could probably supply the entire Canadian construction sheathing market with plywood that meets the Canadian sheathing standards today (and could supply it several times over once the new Canadian performance standard that permits southern pine is adopted by the building codes). This could be done by simply grading its better quality C-D panels (those veneers with defects between 1.5 and 2 inches), which meet the Canadian standard, for use in Canadian construction sheathing.

Canadian sheathing grade plywood panels must have at least Canadian C grade veneers, which allow maximum defects of 2 inches. U.S. sheathing grade plywood may contain interior veneers with maximum defects between 1.5 and 3 inches (the D grade veneers). A substantial portion of U.S. C-D grade plywood in fact has veneers with defects below 2 inches. These panels could be graded upon manufacture as meeting Canadian C grade standards.

Some U.S. manufacturers do this today and sell in the Canadian construction market, despite the high tariff, either during strikes in Canada or when the Canadian price is sufficiently higher than the U.S. price to overcome the tariff. It does not involve a substantial increase in cost to grade to Canadian standards.

Grading to the Canadian standard only requires that the grader not only distinguish between veneers with defects under 1.5 inches (U.S. C grade) and veneers with defects over 1.5 inches but under 3 inches (U.S. D grade), but also distinguish those with defects over 1.5 inches and up to 2 inches (Canadian C grade).

It has been estimated that between 20 and 65 percent of U.S. CD grade plywood has veneer with maximum defects under 2 inches, and would therefore meet Canadian sheathing grade standards.

The 65 percent estimate was made by the director of the Technical Services Division of the APA. The APA has also stated in testimony before Congress that over 70 percent of U.S. plywood production is C-D grade plywood.

However, even using the 20 percent estimate would result in 3.2 billion square feet of U.S. plywood meeting Canadian standards for construction sheathing (20 percent of 70 percent of the 23 billion square foot U.S. 1987 plywood production). This is more than the Canadian construction sheathing market, and indeed is more than the entire Canadian market for wood panels for all uses.

The U.S. produces more plywood that meets Canadian construction sheathing standards than does Canada. Once the new Canadian performance standard which allows southern pine is adopted by the Canadian building codes, all of this plywood could be used in Canadian construction.

C. New Canadian Performance Standard

In 1981, after an attempt to harmonize their product standards, both the U.S. and Canadian plywood industries agreed that their grading systems could not be economically harmonized because of fundamental differences in the structures of their respective standards and code systems. In 1985, Canadian panel industry representatives, with the urging of the the American Plywood Association, officially proposed a plywood performance standard that could bridge the gap between the two countries' systems.

In January 1988, the Canadian Standards Association approved a performance standard, which will be published in April. It is expected that this standard will be adopted by the National Building Code of Canada (NBCC) in 1990 and adopted by the provinces no later than 1991. It is possible that a province may adopt the new performance standard even before it is incorporated into the new NBCC standard.

This new Canadian plywood performance standard is complete except that it contains an interim glue bonding requirement based on defect size in the Canadian plywood product standards (2 inches) rather than a glue bonding performance test. The U.S. also has developed a performance standard, and it too does not contain a performance test for bonding and continues to specify bonding requirements in terms of the maximum defect size in its product standard (3 inches).

It is expected that the durability performance test for glue bonding will be completed by the end of 1989, in time for its inclusion with the rest of the performance standard in the next edition of the NBCC.

The Canadian performance standard with a glue bonding performance test will be completed before tariffs have been reduced significantly. By January 1, 1990, the U.S. tariff is scheduled to be reduced to 16 percent, not likely to be low enough to allow any significant importation of Canadian plywood to the U.S.

D. New Performance Standard Allows Southern Pine

The new Canadian plywood performance standard contains no restrictions by species type. It therefore will permit southern pine plywood otherwise meeting the performance standard's requirements.

Southern pine is not now accepted under Canadian building code standards because no one ever requested that it be included in the standards. All of the species that are included were requested to be included by some organization. Since southern pine is not grown in Canada, no Canadian requested its inclusion. Although the APA or any U.S. plywood interest could have requested that southern pine be included, such request was never made.

III. The Purpose of Canadian Building Code Standards For Plywood is Not To Exclude U.S. Plywood

A. Canadian Code Restrictions Not To Exclude U.S. Plywood

As discussed above, the present 15 percent Canadian tariff on U.S. plywood is sufficient to keep U.S. plywood out of Canada except in unusual circumstances when relative price disparities between the U.S. and Canada are sufficient to overcome the tariff. The tariff long preceeds the establishment of the Canadian plywood standard.

Also as discussed above, two-thirds of the Canadian market is not subject to any building code requirement and the U.S. plywood industry could supply the entire Canadian plywood market by grading its better quality C-D grade plywood to Canadian standards.

The APA evidentally wants Congress to believe that somehow the Canadians anticipated the reduction of tariffs by the FTA and established plywood standards in 1978 to take the place of tariffs to keep U.S. construction sheathing out of Canada -- a clairvoyance which evidently did not extend to the futility of establishing standards which would provide absolutely no protection for two-thirds of the Canadian market and virtually none for the remainder.

B. Canadian Code Standards Are Legitimate Regulation

The Canadian plywood standards and related building code provisions have been determined on the basis of technical merit under fair procedures open to the APA and not under the control of the Canadian plywood industry.

1. Canadian Building Code Procedures

- In order to be used as sheathing for the roof or floor of a building in Canada, plywood must meet the applicable Provincial building code (just as buildings in the U.S. must meet state or local building codes). The Provinces adopt building codes, but have delegated enforcement to the municipalities.

- The Provinces routinely adopt as their building codes the National Building Code of Canada (NBCC), although sometimes with changes to either stiffen or relax various standards in the NBCC. In the case of plywood, the provinces have adopted without change the most recent version of the NBCC (and before that the 1970, 1975, 1977, 1980, and 1985 versions).

- The NBCC adopts standards for materials, such as plywood, and specifies construction practices for such materials. In the case of plywood, this means specifying the minimum span widths between joists based on the thickness of the panel for any plywood meeting a standard issued by the Canadian Standards Association.

2. Canadian Standards Procedures

The plywood standards are issued by the Canadian Standards Association (CSA), a private nonprofit organization. CSA standards are developed under the following procedures:

Anyone, including U.S. plywood companies or their trade association, may request that the CSA plywood standard be modified to include a species not presently specified or a defect size not permitted. Such requests should be supported by material justifying the change, i.e., that the panel would have sufficient structural strength and durability.

The Technical Committee on Coniferous Plywood ("Plywood Committee") is the product standards committee with jurisdiction over 98 percent of Canadian plywood and initially rules on such requests. The Plywood Committee is not controlled by the plywood industry. It has four categories of members and and no one category may represent a majority on the committee. The categories are:

a. producers of plywood;

b. users (principally homebuilders and building supply dealers);

c. regulators (including the Canadian Home Warranty organization); and

d. representatives of the general interest (such as consumer groups and research organizations).

When the Committee is at full strength, less than one third of its members will be from the plywood industry.

After a CSA product standards committee approves a standard, CSA's Steering Committee must approve it, but this is generally pro forma.

The National Building Code of Canada (NBCC) then may reference the CSA standard. The NBCC is produced under the auspices of the National Research Council, a Canadian Federal Government organization. However, the only function of the NRC is to provide the services of a secretariat; it has no decisionmaking power. It does not even promulgate or enforce the fair procedural rules for committee actions, which functions are accomplished by a committee of the NBCC.

The NBCC committee responsible for the portion of the NBCC involving construction sheathing is not controlled by the plywood industry. It has 25 members including, home builders, local and provincial building officials, home warranty program officials, architects, engineers, and technical experts (including some from various construction materials manufacturers, including one person from the wood products industry (who is not from a plywood company). These technical experts are on the committee solely for their technical expertise and not to represent their industry.

C. CSA's Plywood Standards Are Appropriate

1. Background: U.S. and Canadian Standards

Plywood panels consist of veneers, usually 1/8 inch thick, that are glued together under pressure and heat with the grain running at right angles on alternate veneers. Both the U.S. and Canada have standards for plywood panels and for the veneers that make up such panels. The higher grades of plywood panels are essentially interchangeable between the U.S. and Canada and are not subject to Canadian building codes. The lower panel grades are used for sheathing grade plywood (covering of roofs and floors of buildings).

The Canadian sheathing standard requires that no veneer be less than Canadian C grade; the U.S. standard requires a U.S. C grade veneer on one face and allows U.S. D grade veneer in the interior and other face. There are many specifications in the Canadian and U.S. grading systems, but the most important is the maximum size of defects, such as knots or knot holes.

- Canadian C grade veneer allows a maximum defect size no larger than 2 inches across;

- U.S. C grade veneer allows a defect no more than 1.5 inches across; and

- U.S. D grade veneer allows a defect no more than 3 inches across.

Plywood graded to Canadian sheathing standards does not meet U.S. building codes, which adopt the PS1 standard issued by the Department of Commerce. This is because the U.S. standard requires a face veneer of U.S. C grade (with a maximum defect of 1.5 inches) while Canadian sheathing has only Canadian C grade (with a maximum defect of 2 inches). To sell Canadian plywood for use as construction sheathing in the U.S. therefore requires that the Canadian producer grade the plywood to U.S. standards, using only the better Canadian C grade veneers (those with maximum defects of 1.5 inches). In the alternative, the Canadian producer may join the APA and seek an APA performance rating for his plywood.

Similarly, U.S. sheathing does not meet Canadian building codes. This is because this Canadian standard allows no veneer lower than Canadian C grade (maximum defect 2 inches) while U.S. sheathing has U.S. D grade veneers (maximum defect 3 inches). Also similarly, the U.S. producer can grade his better quality D grade veneers (those with maximum defects less than 2 inches) to Canadian standards.

2. Determination of Canadian Standards

In 1978, when Canada established its current product standards for plywood, it evaluated defect sizes and determined that the U.S. C grade (maximum 1.5 inch defects) was too stringent for construction sheathing, but that U.S. D grade (maximum 3 inch defects) was too loose and would result in an unacceptable number of justified consumer complaints about the lack of durability.

These problems would result from situations where the D grade plywood was at the low end of the grade (defects between 2 and 3 inches) and the plywood had been rained on before it was covered with tarpaper. Under some circumstances, the panel could delaminate (the glue bond of adjacent veneers could break), causing a substantial localized reduction in panel strength.

In 1978, the CSA Plywood Committee was urged to allow larger defects by plywood producers who anticipated the possibility of producing such plywood. However, the homebuilders and other Committee members decided that although U.S. C grade (1.5 inch maximum defects) was too strict, U.S. D grade (3 inch maximum defects) was too lax and would result in excessive consumer complaints and consequent repair costs. Accordingly, the Committee determined that the appropriate standard for sheathing should have a maximum defect size of 2 inches.

3. Evidence Supporting The Canadian Standard

In a September 1986 report of the Quality Services Division of the American Plywood Association, delamination was examined for various defect sizes. (Please see the attached "Study to Evaluate Glue Bond Quality of Exterior Plywood Panels Utilizing Lower Than "C" Grade Veneers.") The results of this testing show that there was no significant delamination with defects below 2 inches and that the amount of delamination increased exponentially with defect sizes above 2 inches. When defect sizes were increased from 2 inches (the present Canadian C grade) to 3 inches (the present U.S. D grade), the square inches of delamination increases by a factor of from 6 to 20 times. (See Table 2 in the attached Study.) The study reached the conclusion that

> "The data indicate no problems with knots up to 2" across with an increase of 2-1/2" in serious question. Larger knots, both 3" and 4" across the grain, resulted in significantly greater delamination." (See page 8.)

IV. Plywood Standards For Construction Sheathing Not Based on Harsher Weather In Canada

The Canadian plywood industry does not now and has never justified its construction sheathing standard on the basis of harsher Canadian weather.

The APA appears to have successfully created this straw man by repeating this false claim in press releases and in its testimony before Congress. It appears that Congressman Ron Wyden (D-OR) and Senator Bob Packwood (R-OR) have been misled by APA's statements to believe that Canada has made this claim. It has not. In addition, the Bureau of National Affairs Daily Report for Executives has even gone one step further and stated without grounds that the CMHC "rejected U.S. plywood on the grounds that its C-D grade laminations might not weather Canada's harsh winters." This is simply not true and is gross error.

The Canadian standard is based on experience and testing in Canada, and considers all the relevant factors bearing on the performance of plywood that is unprotected during construction. There is no separate standard in Canada for plywood that is protected at all times. Therefore, the standard must recognize that: 1) many homes under construction in Canada have exposed roof and floor sheathing when construction activities are delayed; 2) panels may be exposed to rain over this period, and during shorter periods when construction is in progress; and 3) that excessive delamination of panels is more likely to occur if the veneers of the plywood contain defects over 2 inches.

The Canadian plywood industry's major concern regarding reduced standards for plywood is the potential loss of the wood panel market to non-plywood panels. Canadian plywood producers fear that this would occur because of the poor performance of plywood with the large defects allowed the U.S. C-D Grade plywood.

TESTIMONY OF CONGRESSMAN ROD CHANDLER
before the Trade Subcommittee
of the House Committee on Ways and Means
Concerning the Effect of the U.S./Canada Free Trade Agreement
on the U.S. Plywood Industry
March 18, 1988

The proposed Free Trade Agreement (FTA) between the United States and Canada provides an opportunity to eliminate tariffs, reduce trade barriers and increase trade between the world's two largest trading partners. As Members of Congress, we must be excited about the prospect of freeing trade, and thereby increasing trade, with our neighbors to the north.

The objective of the FTA is to eliminate where feasible and reduce where possible barriers to free and fair trade. The negotiators from both countries are to be commended for their diligence and determination to create the most ambitious bilateral trade agreement in history. On the whole, the agreement is an important step toward free trade. There is, however, an area that, despite the objectives of the agreement, promotes a trade inequity that cannot be ignored.

Provisions in the FTA which were thought to help U.S. softwood plywood will actually hurt the industry. The FTA will eliminate high tariffs on both U.S. and Canadian plywood. Unfortunately, the FTA did not address the issue of Canadian nontariff barriers. Under the agreement, U.S. plywood producers would continue to be denied access to 90 percent of the Canadian market, while Canadian producers would have free access to our market. Clearly, that was not the original intent of the FTA and does not fall under the definition of fair trade.

I would like to briefly outline what the Canadian nontariff trade barrier problem is, how it could affect the U.S. plywood industry, and what can be done to correct the problem.

Canada currently prohibits construction with plywood made with D-grade veneers, which happens to make up 70 percent of U.S. plywood production. In addition, Canada refuses to allow the American Plywood Association to certify plywood as complying with Canadian standards simply because the APA is not "Canadian." Thus, even if Canada would accept U.S. plywood, each U.S. company already certified by the APA would have to go through a costly and time-consuming certification process in Canada. These two requirements effectively bar the importation of U.S. construction grade plywood into Canada.

Of course, Canada has the right to adopt reasonable standards for plywood. But Canada has not adopted performance standards based upon the strength and durability of plywood; rather, Canada has adopted standards that are a targeted trade barrier to U.S. plywood products. The quality of U.S. plywood is not inferior to Canadian plywood. U.S. plywood is used successfully throughout the world, and in many climates more severe than Canada. Indeed, during Canadian plywood industry strikes, U.S. plywood has been a welcome and sought-after product. In other words, if Canada would adopt reasonable performance standards, based on the strength and durability of the product, U.S. plywood could compete fairly in Canada. The U.S. plywood industry is capable of competing in Canada under any reasonable performance-based standards. To put it simply, our plywood is as good as theirs, but Canada has found a way to protect its home market at the expense of ours.

The nontariff barrier to plywood products is not a new issue. Since the Tokyo Round of Multilateral Trade Negotiations it had been the position of the U.S. government and the U.S. plywood industry that tariffs should only be eliminated if the nontariff barriers were eliminated. In the FTA, however, the United States agreed to eliminate its tariffs if Canada would review the nontariff barriers on plywood used in Canadian Mortgage and Housing Corporation housing. But that accounts for less than 10 percent of the Canadian construction market. U.S. plywood producers still face nontariff barriers on over 90 percent of the

Canadian market while Canadian producers have unlimited access to the U.S. market.

The other nontariff barriers were left out of the FTA because Canada claimed that its discriminatory standards were drafted by a private organization. But private standards do not bar the use of U.S. plywood in Canada: Government regulations do. The fact that the standards incorporated in the National Building Code and provincial building codes of Canada are based on recommendations by a private organization does not mask the fact that the standards are ultimately federal regulations and, as such, are under federal jurisdiction.

The oversight in the FTA that allows the continuation of nontariff barriers on the majority of the Canadian market poses a real threat to the U.S. plywood industry. The FTA gives Canada an unfair advantage: unlimited Canadian imports could result in millions in lost revenues to U.S. companies. During a recession the effect could be much worse. In Washington state 6,000 people are employed at 18 plywood mills. If left uncorrected, the inequity in the FTA will ultimately cost jobs -- jobs that we can't afford to lose. And those jobs won't be lost because of inefficiency or a superior foreign product; rather, Americans will lose jobs because of an unfair trade advantage that we have incorporated into the FTA.

I certainly support the objectives of FTA, and I am excited about the potential for economic growth in both countries, but I am concerned about the plywood inequity. The U.S. plywood industry is not asking for protection, it is merely asking for a chance to compete fairly by gaining access to the Canadian market equal to Canadian access to our market. That was the objective of the FTA and fortunately we still have an opportunity to address the oversight.

When the Administration sends the FTA implementing legislation to Congress, language can be included that would solve the plywood problem once and for all. I support a proposal that would give the U.S. Trade Representative three years in which to negotiate the end of the Canadian nontariff plywood barriers. If, at the end of that three year period, those barriers have not been eliminated, then the U.S. tariffs on Canadian structural panels will "snap-back" to their 1988 levels. This proposal would give the two governments an opportunity to resolve this problem through negotiations while providing a real incentive to do so. In addition, this proposal would ensure that the U.S. plywood industry is not unduly injured by the unfair Canadian nontariff barriers.

As I have said several times, the FTA offers us a unique opportunity to promote the development of free and fair trade through our example with Canada. We have the means and ability to address an oversight that was included in the FTA before it is too late. The remedy is simple, the consequence, if we ignore it, will be severe.

WRITTEN TESTIMONY ON
U.S.-CANADA FREE TRADE AGREEMENT
SUBMITTED BY
MARY K. ALEXANDER, TRADE PROJECT DIRECTOR
CITIZENS FOR A SOUND ECONOMY
TO WAYS AND MEANS COMMITTEE
MARCH 18, 1988

Citizens for a Sound Economy is a grassroots-supported public policy organization with more than 250,000 members nationwide. On behalf of our members, we strongly urge the Ways and Means Committee to approve the recently negotiated free trade agreement with Canada.

It is clear that this pact will have far-reaching implications. It offers substantial opportunities to both nations' citizens and businesses in the form of lower consumer prices, greater consumer choices, and additional export opportunities for U.S. business. Economic studies estimate that the free trade agreement could raise U.S. gross national product by anywhere from $10 billion to $45 billion--that's up to one percent of U.S. GNP. These studies also estimate Canada's GNP may increase by 2 to 5 percent.

The agreement would further enhance the scope of the special relationship between the United States and Canada. Similarities in culture and economics, common language, a large volume of trade, and generally good trade relations give the two countries an excellent opportunity for success.

This agreement could not come at a more crucial time. Trade disputes between the two countries are growing, and protectionist sentiment is on the rise. If this agreement is not ratified, chances for the success of another negotiation before the next century are almost nil.

The United States and Canada already share the world's largest bilateral trading relationship, with trade totaling more than $150 billion in 1987. Two million American jobs, primarily in our industrial heartland, depend directly on exports to Canada, and more than 2.2 million Canadian jobs depend directly on exports to the United States. More jobs in the United States depend on trade with Canada than on trade with any other country. The United States exports more to the province of Ontario alone than to Japan, this country's second largest trading partner. Michigan, New York, and California, the largest exporting states to Canada, have the most to gain by the agreement. In 1986, they alone exported more than $16 billion worth of goods to Canada.

The two countries have agreed to eliminate all tariffs on each other's goods within ten years after the agreement takes affect. Manufacturers and consumers in both countries will benefit the greatest by the simple elimination of these tariffs. Canada has some of the highest tariffs in the industrialized world. They average between 9 percent and 10 percent, but many exceed 15 percent, including those on textiles, clothing, and footwear. Although the average U.S. tariff is between 4 percent and 5 percent, the United States also has tariffs of over 15 percent on many goods, including clothing. The Department of Commerce estimates that more than 14,000 new jobs would be created in the American machinery, textile, clothing, paper products, and furniture manufacturing industries as a result of tariff elimination alone.

The free trade agreement opens up new avenues of opportunity for small and medium-sized U.S. companies previously unable to generate much business with Canada because of its high tariffs. If Canada's tariff rates were merely cut to the level of other industrialized nations, U.S. exporters could gain $500 million in sales annually, according to the Office of the United States Trade Representative. Manufacturers and processors of such products as office machines, motorcycles, leather, whiskey, and fish will benefit first because of the immediate elimination of tariffs. The more politically sensitive tariffs on consumer goods such as beef, appliances, costume jewelry, farm products, lumber, other distilled spirits, plastics, rubber, textiles, apparel, tires, and watches will be eliminated by 1999.

Because no international agreements yet prevent protectionism in the services industry, the pact breaks new ground by establishing trading rules in the areas of investment, financial services, and technology. Trade in services such as transportation, insurance, and the professions is liberalized, and remaining regulations would not be used to discriminate against imports from either country. The pact includes this country's first bilateral agreement covering the entire financial sector. Discrimination faced by U.S. financial institutions operating in Canada is eliminated, and financial firms on both sides of the border will compete on a more equal basis. Foreign investment by citizens of both countries can take place in a more open and secure environment. Investors in both countries will now be able to start new ventures and sell old ones with a minimum of government screening.

The benefits of truly open trade will be demonstrated by the agreement's success. Enhanced U.S.-Canadian prosperity has the potential to spur worldwide trade liberalization in an era when protectionism is on the rise. The agreement can convince other nations that the United States is seriously interested in comprehensive, multilateral reductions in trade barriers. It can also set an example for the rest of the world on how reduced barriers to trade can accelerate economic growth and provide greater consumer choice. Other countries should be encouraged to follow suit.

There are mounting pressures to renegotiate parts of this agreement. Some industries have said they want better treatment than it gives them currently. However, members of Congress should look at the overall economic benefits both countries will receive. The United States will be better off with the agreement than without it. And once it is implemented, both countries can more onward to continue the process of trade liberalization. Additional areas for negotiation can be explored, but only after this first step is completed.

CSE has members in every congressional district ready to mobilize in support of sound economic policies. We believe that this market-opening agreement deserves your full support.

(By Permission of the Chairman:)

STATEMENT BY KLAUS E. GOECKMANN
VICE PRESIDENT, MARKETING AND SALES
COMINCO METALS

INTRODUCTION

Cominco Ltd. of Vancouver, Canada with its major subsidiary Cominco American Inc., headquartered in Washington, is an integrated mineral resource company engaged; in the mining, smelting and refining of minerals, the manufacture of chemicals and fertilizers, the manufacture of electronic materials, and in mineral exploration in many countries.

The company employs 8,400 worldwide and 960 of these employees are located in the United States. At the present time in the United States, the company has interests in operating mines in Missouri (lead), Montana (phosphate rock), California (trona) and Nevada (gold); fertilizer operations in Nebraska and Texas; and electronic materials operations in Washington. In addition, the company is in the process of developing the Red Dog Mine in Alaska, which will be one of the largest combined zinc-lead mines in the world. This project is expected to start producing in 1990. The cost of development is estimated at approximately $400 million and annual expenditures in Alaska are estimated at $100 million. Over its operating lifetime of 50 years, it is estimated that the Red Dog Mine will generate over $5 billion in gross revenues (1985 dollars).1/ The project will provide 300 new permanent jobs in Alaska at the mine and an additional 230 jobs in industries servicing the mine.

In short, Cominco is a Canadian company with substantial interests in both the United States and Canada and therefore in a unique position with regard to the Canada-U.S. Free Trade Agreement (FTA). We believe that the FTA will be beneficial for Cominco, its customers and suppliers on both sides of the border and for this reason we strongly support the Agreement.

OVERVIEW OF THE WORLD MINING INDUSTRY

During the past 15 years, there have been fundamental changes taking place within the global mining and smelting industry. These changes resulted in a particularly lean period for, and adjustments in, the industry worldwide beginning in 1980, with 1987 being the first year of any relief for many of the producers. This period of readjustment was caused by the macro-economic forces resulting from the world wide slowdown in industrial growth which began with the first oil crisis in 1973. Since the early 1970's there has been virtually no growth in consumption for most mineral commodities. Because the metal mining industry is characterized by a gestation period for investments of up to 10 years, the capacity expansion at the end of the 1970's was out of phase with the "adjusted" industrial growth pattern, with the result that the metal industries worldwide entered the 1980's with very substantial excess capacity. Unfortunately, most of this excess capacity was financed through debt and this exacerbated the problems of the industry when metal prices began to fall as a result of the oversupply. In addition, the competitive

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1/ All figures are U.S. currency unless otherwise noted.

position of the United States' mining industry was seriously hurt in the 1980's by the strength of the dollar, which between 1980 and 1985 increased in real terms by as much as 30% to 40% relative to the value of the currencies of other major mineral producing countries and by 15% relative to Canadian currency.

Apart from these global macro-economic factors, there are a number of other factors such as environmental policies in both the United States and Canada which have created complications for the industry. However, one thing is clear, these problems have been worldwide and the suffering has been universal. The problems certainly have not resulted from unfair competition from Canadian producers.

Comments Concerning Statements Made by the Non-Ferrous Metals Producers Committee

Since our Company has been referred to frequently in these hearings and in the press in connection with the FTA, we would like to comment and put the record straight with respect to several false or misleading statements which have been made.

First, concerning the facilities at Trail, British Columbia, Cominco has operated a zinc-lead-silver smelter/refinery complex since the early part of this century. Phosphate and sulphate fertilizer production commenced in the 1930's as an environmental measure to address sulphur emissions and prevent acid rain. Major portions of these facilities have been rebuilt a number of times as technologies improved and in response to economic and environmental pressures.

Within the past decade Cominco has invested about $400 million (financed mainly with debt) refurbishing its zinc plant and installing new environmental protection facilities at Trail. An additional $30 million investment is planned in the future to enable the plant to treat an even greater variety of zinc concentrates. The reason for Cominco's major expenditures at Trail was that the Company made a fundamental decision in the late 1970's to remain in the zinc-lead smelting business for the long haul. In Cominco's view that equated to installing the latest technology which would ensure competitive operating costs, protection of the environment and protection of the health of its employees. As part of the $400 million investment, a new smelter feed plant and a waste water treatment facility were installed in the late 1970's at a cost of about $35 million. This renewal process is continuing. Currently a two-stage C $260 million lead smelter construction program is underway to replace traditional sinter plant-blast furnace technology with a state-of-the art oxygen smelting process, and to replace the existing lead slag fuming plant with improved technology.

When complete in the early 1990's, this upgraded lead-silver smelter will meet all environmental and occupational hygiene requirements. Because of the new slag fuming process, discard slag will be chemically inert and pose no future environmental risk. The technologies employed in other North American lead smelters are incapable of meeting OSHA hygiene standards for lead in the workplace and none of them produces an inert discard slag.

The governments of Canada and British Columbia have invested C $134 million in the lead smelter project through the purchase of project-related preferred shares. These shares accumulate dividends at a rate of 8% per year and provide for redemption commencing in 1997. Annual dividend and redemption payments are based on lead and silver prices and provide for dividends of up to 12% per year. The investment in this project demonstrates a confidence in the future of lead and zinc, and the preferred shares represent a viable commercial instrument which should provide the investors with a reasonable rate of return.

Current U.S. tariffs are 3.0%2/ on refined lead and 1.5% on refined zinc, hardly major protection. At current prices these equate to about 1.2¢/lb. for lead and .7¢/lb. for zinc. Under the FTA, these tariffs would be gradually eliminated over a ten year period. Currently, the United States imports about one-quarter of its zinc concentrates and two-thirds of its consumption of refined zinc. Lead concentrate imports are only 8-12% of domestic requirements and refined lead imports are about 15% of metal consumption.

The market price for lead has risen from 19¢/lb to 34¢/lb over the past two years. Given the 15¢ price rise compared to the 1¢ tariff protection, it is hard to support the statement made by the United States Non Ferrous Metals Committee that the East Helena smelter of Asarco Inc. might have to be closed as a consequence of the implementation of the FTA.

Cominco finds it to be paradoxical for the United States Non-Ferrous Metals Committee, one of its few members being Asarco, to criticize the commercial transaction for the investment at Trail in view of the fact that $134 million of Asarco's $392 million long term debt as of September 30, 1987 was acquired through tax exempt Environmental and Pollution Control bonds. In the 1986 Asarco annual report it was stated that the $69.3 million balance under the Gila County (Arizona) Pollution Control Revenue Refunding Bond had a weighted average interest rate at December 31, 1986, of 4.9%. Based on current commercial bond rates and the extended repayment year of 2006, this instrument would appear to include an element of unambiguous subsidy.

Cominco believes that the major decline in the United States zinc industry over the past 20 years is primarily due to a relatively unfavorable presence, geologically, of high grade zinc ore bodies in the lower forty eight states. Recent exploration activity has established that the State of Alaska has, like the northern part of Canada, a substantial endowment of both zinc and lead prospects. The Red Dog Mine in Alaska, jointly controlled with the Northern Alaskan Native Association, is such a property. With 17% zinc, significant silver values, and 5% lead, this mine will likely place the United States in a global net export position for zinc and lead concentrates. Red Dog will be a major contributor to the expansion of Alaska trade and will have a favorable impact on the United States balance of trade.

2/ Ad valorem, with a minimum of 1.0625¢/lb.

A significant portion of the zinc concentrates and some of the lead concentrates from Red Dog will be sold to the Cominco smelter complex at Trail. The remainder of the output will be sold to South-east Asian and European smelters. United States smelters have shown little interest in Red Dog concentrates mainly because their zinc refineries do not recover silver and because of substantial transportation cost disadvantages.

Recent press reports have portrayed Cominco's large zinc-lead-fertilizer complex at Trail as a threat to employment in Montana and Idaho. This is incorrect. The Trail complex is directly responsible for 135 phosphate mining jobs in Montana, and contributes to the employment of an additional 400 people in existing lead and zinc mines in Idaho and Montana. The value of Cominco's purchases from these mines exceeds $40 million per year. Discussions are currently underway which may result in the start up of other mines in the area, because of the ability of the Trail smelter to treat complex lead-zinc-silver-gold concentrates. Many Idaho and Montana mines depend on our smelter at Trail as their main customer.

The recent start-up of the Warm Springs, Montana phosphate mine was made possible because of a long term purchase agreement with the Trail smelter complex. The smelter also purchases 100% of the gold bearing zinc concentrates from Pegasus Gold's Montana Tunnels property near Jefferson City. The Pegasus operation employs 160 people. There are no other North American smelting complexes which can economically provide the essential gold recovery from this type of zinc concentrate. The lead concentrates from the Montana Tunnels mines go to the Asarco smelter. Cominco purchases about 50% of the silver-lead concentrates from Hecla's 200 employee Lucky Friday mine at Mullen, Idaho. Asarco purchases the remaining 50%.

CONCLUSION

In conclusion, Cominco is a significant net contributor to mining, smelting and refining industries in both the United States and Canada. We contribute by providing jobs and economic opportunities for workers and communities in Canada and many U.S. states, including future contributions in Alaska. We believe the trade "playing field" is presently nearly level and that the FTA will make it completely level in the next ten years. We further believe that through the FTA, what is at stake is the overall competitive position of North American industry and the competitiveness of North American downstream manufacturers who need Cominco products to compete in an increasingly agressive world marketplace, and that the FTA will help accomplish this goal.

March 15, 1988

STATEMENT OF ROGER B. SCHAGRIN, EXECUTIVE DIRECTOR AND GENERAL COUNSEL, COMMITTEE ON PIPE AND TUBE IMPORTS

This statement concerning the proposed U.S.-Canadian Free Trade Agreement is submitted on behalf of the Committee on Pipe and Tube Imports (CPTI), a trade association of 23 domestic pipe and tube producers. A list of the CPTI membership is attached.

The CPTI supports the main goals of the Agreement, the reduction and elimination of tariff and non-tariff barriers on trade between the two countries. However, the CPTI opposes the final draft of the Agreement on two grounds: 1)The dispute settlement provision of Chapter 19 unnecessarily cedes U.S. sovereignty over its trade laws and raises a spectre of serious future problems under the most favored nation provision of the Gatt; 2)The U.S. and Canadian governments have failed to address the surge in Canadian pipe and tube imports which has occurred since the beginning of the President's steel program.

The Dispute Settlement Provision

Chapter 19 of the Agreement provides for the appeal of final determinations to a dispute resolution panel composed of U.S. and Canadian appointees. This panel is directed to use U.S. statutes, legislative history, and judicial precedent in its determinations. It will replace the jurisdiction of the Court of International Trade and Court of Appeals for the Federal Circuit over unfair trade determinations made by the U.S. Department of Commerce and the International Trade Commission.

The CPTI has been very active in using our country's trade laws to stem the tide of unfairly traded imports in our markets. Since its incorporation in 1984, the CPTI and its members have filed or intervened in over 50 antidumping and countervailing duty actions. This has been necessitated by 1) the tremendous world overcapacity to produce pipe and tube products; 2) state ownership and subsidization of foreign pipe and tube producers; 3) protected foreign markets and the openness of the U.S. market as a haven for dumping of excess production. We have complained of, and continue to object to, the politicization and idealogical free trade orientation of the Reagan Administration's appointments to the International Trade Commission. However, we have generally found the decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit to be fair, impartial, objective and judicious.

It is difficult to understand the Canadian's absolute insistence on the U.S. ceding sovereignty over the enforcement of its laws to a binational panel. In most cases involving Canadian imports, the International Trade Commission has ruled favorably for the Canadians. In other major cases involving imports of softwood lumber and potash, the U.S. and Canadian governments have entered into suspension agreements before final determinations were made. No basis exists for the Canadians to feel that they have been mistreated by nationalistic enforcement of the United States unfair trade laws. Thus, many in the U.S. manufacturing sector fear that Canada's insistence on a binational dispute settlement is an attempt to thwart the proper application of U.S. unfair trade laws against Canada as they would be applied to any of our other trading partners. This fear is not without foundation, particularly in light of the aggressive rhetoric of the Canadian steel industry in the press.

Congress should be extremely wary of turning over the interpretation of U.S. laws and our obligations under multilateral international agreements to a binational panel subject to political pressures and nationalistic manipulation from either country. The Court of International Trade and the Court of Appeals for the Federal Circuit have been charged by Congress with the interpretation of U.S. unfair trade laws. The interpretation of the laws of the United States should remain the province of the impartial United States Federal courts, which are presided over by an independent judiciary appointed for life and which were created for that very purpose.

Both U.S. and Canadian unfair trade laws are supposed to operate within the guidelines of the General Agreement on Trade and Tariffs (GATT) and its Dumping and Subsidies codes. If either U.S or Canadian law is not in accordance with those international codes, then either country already has sufficient recourse under the existing dispute settlement provisions of the GATT to resolve any disagreement.

The problem with turning over the interpretation of U.S. unfair trade laws to a U.S.-Canadian dispute panel is illustrated by the following example. Suppose that domestic widget manufacturers file a dumping case against widgets from Canada, Japan and Germany and that the Commerce Department makes final affirmative dumping determinations against all three countries in the amounts of 15%, 20% and 25% respectively. Assume further that the Canadians appeal some application of U.S. dumping law to the U.S.-Canada dispute panel and that Germany and Japan appeal the same issues to the Court of International Trade. Assume finally that the Court of International Trade upholds the Commerce Department's determinations as to Germany and Japan, but that the U.S.-Canada dispute panel overturns the Commerce Department's decision as to Canada. The Commerce Department would now find itself in the unhappy position of being required to apply one interpretation of U.S. dumping law to Canada and another to the rest of the world.

This example raises several issues. First, treating similarly situated parties differently under U.S. law raises questions of due process and equal protection. Second, each of our other trading partners would have the right to bring a complaint under the GATT dispute settlement mechanism alleging that the Canadians were receiving different and preferential treatment under U.S. trade laws.

Assume that the example above is changed so that (1) a dumping case is only filed against Canada; (2) Canadian producers are found to be dumping; (3) the Canadian producers appeal to the U.S.-Canada dispute resolution panel; and (4) the Commerce Department's decision is overturned. If the Commerce Department then applies the interpretation of U.S. law espoused by the dispute settlement panel to all of our trading partners in order to avoid the type of preferential treatment in the first example, then the U.S.-Canada dispute panel will be in the position of interpreting U.S. law as it will be applied to the whole world. In essence, the United States will have Canadian nationals making U.S. law. This ceding of U.S. sovereignty is not an issue that Congress should dismiss lightly.

The addition of a dispute resolution panel with jurisdiction over U.S. unfair trade laws creates serious problems for what is essentially a good idea. Enough benefits exist for both countries in this Agreement that the exclusion of this provision should not prevent the rest of the Agreement from being adopted by Canada. If this issue is truly essential to adoption by Canada, then Congress should seriously question the Canadians' motives and commitment to truly free trade between the U.S. and Canada.

The interpretation of U.S. unfair trade laws passed by Congress should remain the province of our independent and impartial federal judiciary. Americans, Canadians and all other persons enjoy full consideration and fair treatment before these Courts independent of nationalistic pressure of parochial political influence. The Canadians can provide no evidence that they have received anything but fair treatment in U.S. Courts.

If they can provide such evidence, then Congress has a much bigger problem to consider. To the extent the Canadian government is unhappy with the results its citizens and industries received before these tribunals, it maintains its full rights to treat these problems within the dispute resolution mechanism of the GATT. For these reasons, the CPTI and its members urge Congress not to approve a U.S.-Canada Free Trade Agreement that includes provisions for ceding control over U.S. unfair trade laws to a U.S.-Canada dispute resolution panel.

The Free Trade Agreement Fails to Address the Surge in Canadian Imports Since the Beginning of the President's Steel Program.

Between 1984 and 1987, imports of pipe and tube from Canada have increased from 431,000 tons to 520,000 tons per year. However, because of the tremendous decline in demand from the energy related sectors, U.S. consumption fell by over one third, from 9.7 to 6.3 million tons. Therefore, the Canadians' share of the U.S. market almost doubled in this three year period, from 4.4 percent to 8.2 percent. This is even greater than the increase in import penetration by Canadian steel products in general.

This increase in Canadian imports has been caused in part by Canadian unfair trade practices. In May, 1986, a dumping order went into effect on imports of Oil Country Tubular Goods from Canada. Margins range from 3.48 percent for Sonco Tube, 13 percent for Algoma, to 33.78 percent for Ipsco. In January 1986, the Commerce Department found dumping margins on imports of structural tubing from Canada. In February 1986, the International Trade Commission made a negative injury determination. In spite of information presented by petitioners that additional Canadian mills were going to be concentrating on exports to the United States, the Commission found "[the Canadian's] 1986 marketing plans, which include only modest increases in shipments to the United States, will lead to a decreased relative presence in the U.S. market." Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Canada, Inv. No. 731-TA-254 (Final), USITC Pub. 1808 at 16 (February 1986). A review of Canadian imports of structural tubing is attached. 1986 imports were 36 percent higher than 1985 levels, 1987 levels were 58 percent higher than 1985 levels. While the market has increased somewhat, the Canadians are estimated to have increased their share of the market by approximately 40 percent since 1985.

In another dumping investigation involving imports of line pipe produced and exported by Ipsco from Canada, petitioners reasonably asserted that the dumping duties on line pipe would be even higher than the 33.78 percent dumping duties found on imports of OCTG from Ipsco. However, the International Trade Commission made a preliminary negative determination, in spite of the fact that imports from Canada had increased from their traditional 1 percent share of the U.S. market to over 7 percent for the first quarter of 1987. The Commission found that the reason for this surge was a strike at U.S. Steel. The U.S. industry must wonder whether the Commission reasoned that Canadian producers had more of a right to U.S. Steel's customers than did American firms. Appeals of both the structural tubing and line pipe cases are pending at the Court of International Trade.

Finally, we note that Algoma started production at its new seamless pipe mill in 1987. Much of the production of this mill is destined for the United States. Algoma was only able to complete this mill because its parent corporation, Canadian Pacific, was granted a special tax credit by the Canadian government.

It has been reported that Canada and the United States are now discussing export targets for major steel products, including pipe and tube products. The Canadian government and steel industry have made excuse after excuse for why their exports to the United States have surged since the beginning of the President's steel program. While the Administration (which has been more interested in the rhetoric than the reality of fair trade) has always bowed to these excuses, Congress should not. In its consideration of the U.S.-Canada Free Trade Agreement, members of Congress should demand that steel export target levels be reached that return Canadian market share to 1984 levels. The U.S. should have the authority to impose unilateral restraints if these target levels are significantly exceeded.

The CPTI, its members, and the American workers employed by these members hope that the Committee and the Administration will address these issues as they consider implementing legislation for the U.S.-Canada Free Trade Agreement.

THE COMMITTEE ON PIPE AND TUBE IMPORTS

Allied Tube & Conduit Corp.
16100 S. Lathrop
Harvey, IL 60426

Allied Tube & Conduit Corp.
11350 Norcom Rd.
Philadelphia, PA 19154

Allied Tube & Conduit Corp.
Barnett Shoals Road
Watkinsville, GA 30677

Allied Tube & Conduit Corp.
P. O. Box 277
Antioch, CA 94509

Allied Tube & Conduit Corp.
11539 N. Houston Rosslyn Road
Houston, TX 77088

Allied Tube & Conduit Warehouse
9200 Calumet Aveune
Munster, IN 46321

American Tube Co., Inc.
P.O. Box 6633
Phoenix, AZ 85005

American Tube Co., Inc.
Kokomo Works
101 East Broadway
Kokomo, IN 46901

Bellville Tube Division
(Division of Quanex Corp.)
P.O. Box 220
Bellville, TX 77418

Bull Moose Tube Co.
P.O. Box 214
Gerald, MO 63067

Bull Moose Tube Co.
1819 Clarkson Rd., Suite 100
St. Louis, MO 63017

Bull Moose Tube Co.
P.O. Box 219
Trenton, GA 30752

Bull Moose Tube Co.
P.O. Box 56
Chicago Heights, IL 60411

Century Tube Corp.
P.O. Box 7612
Pinebluff, AR 71611

Copperweld Tubing Group
Four Gateway Center
Suite 2200
Pittsburgh, PA 15222

Gulf States Tube
(Division of Quanex Corp.)
P.O. Box 952
Rosenberg, TX 77471

Hannibal Industries, Inc.
3851 Santa Fe Avenue
Los Angeles, CA 90058

Harris Tube Company
8720 So. San Pedro Street
Los Angeles, CA 90003-3599

Keystone Pipe Threading & Testing
(Div. of Pittsburgh Tube Co.)
125 Pillow Street
Butler, PA 16001

Laclede Steel Company
10 Broadway
St. Louis, MO 63102

Laclede Steel Company
P. O. Box 2576
Alton, IL 62002-9011

Lasalle Steel
Division of Quanex Corp.
1412 150th Street
Hammond, IN 46327

Maneely-Illinois, Inc.
(Div. of Wheatland Tube)
4435 S. Western Blvd.
Chicago, IL 60609

Maruichi American Corp.
11529 S. Greenstone Avenue
Santa Fe Springs, CA 90670

Maverick Tube Corp.
400 Chesterfield Center
Suite 310
Chesterfield, MO 63017

Maverick Tube Corporation
P. O. Box 696
Union, MO 63084

Michigan Seamless Tube
(Div. of Quanex Corp.)
400 McMann St.
South Lyon, MI 48178

Ohio Steel Tube Co.
(Div. of Copperweld)
175 Mansfield
Shelby, OH 44875

Omega Tube and Conduit Corp.
(Div. of Western Tube and Conduit)
8523 Frazier Pike
Little Rock, AR 77206

P & H Tube
(Div. of Southwestern Pipe)
P.O. Box 5217
Bossier City, LA 71010

Pittsburgh Tube Co.
P.O. Box 1
Jane Lew, WV 26378

Pittsburgh International
P.O. Box 9 - Route 24
West Fairbury, IL 61739

Pittsburgh Tube Co.
P.O. Box 326
Darlington, PA 16115

Pittsburgh Tube Co.
2060 Pennsylvania Avenue
Monaca, PA 15061

Quanex Corp.
Atlantic Tube Division
20 Harmich Rd.
South Plainfield, NJ 07080

Quanex Corp.
17177 N. Laurel Park Drive
Suite 307
Livonia, MI 48152

Regal Tube Co.
(Div. of Copperweld)
7401 S. Linder
Chicago, IL 60638

Sawhill Tubular Division
Cyclops Corp.
P.O. Box 11
Sharon, PA 16146

Searing Industries
2730 E. 37th St.
Vernon, CA 90058

Sedco Products of Florida, Inc.
(Div. of Wheatland Tube)
Stadium Road & Bennett St.
Auburndale, FL 33823

Seminole Tubular Products Co.
(Div. of Wheatland Tube)
5000 Northwest 37th Ave.
Miami, FL 33142

Seminole Tubular Products Co.
(Div. of Wheatland Tube)
9208 Jeffrey Drive
Cambridge, OH 43725

Seminole Tubular Products Co.
(Div. of Wheatland Tube)
5601 Canal Street
Houston, TX 77060

Sharon Tube Co.
134 Mill Street
Sharon, PA 16146

Southwestern Pipe, Inc.
P.O. Box 2002
Houston, TX 77252

Tex-Tube Division
Cyclops Corp.
P.O. Box 7705
Houston, TX 77007

UNR-Leavitt
1717 W. 115th Street
Chicago, IL 60643

UNR-Leavitt
4923 Columbia Ave.
Hammond, IN 46320

UNR-Leavitt
13901 S. Western Avenue
Blue Island, IL 60460

UNR-Leavitt
211 Industrial Drive North
P. O. Box 699
Gluckstadt, MS 39110

Welded Tube Company of America
1855 E. 122nd Street
Chicago, IL 60633

Welded Tube Company of America
1818 Market Street
36th Floor
Philadelphia, PA 19103

Western Tube & Conduit
2001 East Dominguez St.
P. O. Box 2720
Long Beach, CA 90801-2720

Wheatland Tube Corp.
Council & Railroad Avenues
Wheatland, PA 16161

As of 1/88

TSUSA 610.3955 from Canada

Month	Tons	Month	Tons	Month	Tons	Month	Tons
1/84	9,319	1/85	4,390	1/86	8,968	1/87	15,351
2/84	7,450	2/85	10,789	2/86	12,279**	2/87	12,182
3/84	9,919	3/85	8,784*	3/86	11,630	3/87	15,136
4/84	11,152	4/85	7,853	4/86	8,620	4/87	13,602
5/84	7,743	5/85	6,753	5/86	10,092	5/87	12,215
6/84	8,060	6/85	9,154	6/86	10,329	6/87	13,144
7/84	8,481	7/85	9,737	7/86	14,896	7/87	12,151
8/84	7,014	8/85	6,630	8/86	10,085	8/87	8,910
9/84	6,135	9/85	9,568	9/86	10,051	9/87	13,862
10/84	8,182	10/85	9,089	10/86	12,958	10/87	13,573
11/84	8,400	11/85	7,118	11/86	13,647	11/87	12,649
12/84	9,002	12/85	8,618	12/86	10,828		
Avg./84:	8,405	'85:	8,207	'86:	11,199	'87:	12,980

* Petition filed.

** Final negative determination.

STATEMENT OF A.G.W. BIDDLE, PRESIDENT, COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION

Mr. Chairman, committee members, I thank you for allowing the Computer & Communications Industry Association (CCIA) to submit testimony on this critical, historic agreement between the United States and Canada, and we appreciate your willingness to consider our position.

The Free Trade Agreement with Canada promises substantial benefits to our industry and historic momentum to the free trade movement. We are compelled to offer testimony because the agreement exemplifies much of what our association has fought for in our fifteen years of existence. We are especially excited about the opportunities for substantial, continental economic growth that FTA should provide.

CCIA is an international trade association composed of manufacturers and providers of computer, information processing and telecommunications products and services. Our members produce and sell semiconductors, computers, peripherals, software, and telecommunications systems and services. CCIA members cover the information industry playing field and, collectively, generate in excess of $90 billion in annual revenues.

A central tenet of CCIA is the nurturing of a competitive global business environment, not only for the benefit of our industry but for all industries. In the computer and communications industry, this environment requires fair international trade, vigorous telecommunications competition, fair and open government procurement opportunities and increased availability of, and access to, growth capital. To CCIA, the real strength of the Free Trade Agreement between the United States and Canada is that it improves the business climate in all of these areas, not just in trade. FTA will mean wider telecommunications competition, more open procurement policies and stable investment opportunities for our members and other U.S. companies in Canada.

The overall agreement, though, could be better. We would have liked the FTA to be a breakthrough in the area of intellectual property rights -- a precedent and framework for multilateral agreement at the Uruguay Round on copyright protection issues. But instead, both sides reiterated a commitment to an intellectual property agreement at GATT. We also wanted the Canadians to remove all data processing restrictions, but some provincial barriers were retained. Regardless of the shortfalls, however, we believe the FTA is an important step towards a freer, stronger world economy.

TARIFFS

The centerpiece of FTA is the removal of tariffs: some in 1989, others phased-out by 1994 or 1999. The Canadian Government has long been enamored of tariffs, and even though U.S. sales of computer equipment to Canada top $1 billion annually, U.S. companies could garner even more of the the market if it was more accessible. We currently enjoy a more than two-to-one trade advantage in the sale of data processing equipment with the Canadians. Undoubtedly, this advantage would expand if Canadian trade tariffs were eliminated.

In the area of telecommunications equipment, U.S. manufacturers have been virtually shut out in Canada due to the tariffs, while Canadian manufactures have enjoyed substantial success in the U.S. This agreement gives U.S. companies the opportunity to fairly compete with the Canadians.

The results will be good news for both countries. While increased sales of high tech equipment will help the U.S. narrow its international trade deficit, Canada's economy will become more advanced technologically through increased high tech purchases from the U.S. Today, Canada is relatively advanced technologically, but small to mid-sized Canadian companies are starved for U.S. computer and communications products not available from Canada's indigenous technology industries. A more technological Canadian economy would lead to a more prosperous consumer culture in Canada. This could, in turn, lead to more U.S. exports to Canada. As a result, the Free Trade Agreement will be a much better bargain for the U.S. in five or ten years than it now seems.

TELECOMMUNICATIONS

CCIA is very pleased that the Free Trade Agreement includes a section on trade in services -- the first set of international rules governing this booming segment of world trade. While the agreement does not change much in the services area because services trade between our two countries is relatively free already, accounting for more than $11 billion worth of business annually between the U.S. and Canada, the agreement does codify liberalized trade policies.

But what FTA does guarantee is the further development of an open, competitive enhanced telecommunications and computer services market in North America. The regional Bell operating companies were just recently granted the right to provide limited information services. With the FTA, access to the telecommunications networks of the U.S. and Canada will be open, which means that consumers and businesses in both countries should have access to data processing and storage services, videotext, electronic mail, voice messaging, and the like. The agreement will also permit the leasing, sharing and reselling of telecom transport service and the attachment of special equipment to the network.

CCIA also hopes the agreement will serve as a blueprint for an international services trade agreement at GATT, and we are pleased that both governments will push for such an agreement at the Uruguay Round of talks.

PROCUREMENT

Our members are also excited about the government procurement opportunities created by the agreement. Current Canadian law contains a number of barriers which, in some cases, entirely bar U.S. suppliers from entering procurement competitions. Furthermore, there is currently no effective bid protest system for U.S. manufacturers in Canada. While the U.S. has exempted Canada from the great majority of "Buy American Act" provisions, a number of significant "Buy Canadian" rules thwart U.S. companies in their quests for contracts.

Under FTA, any federal government purchase of more than $25,000 must be open to suppliers of each country on a non-discriminatory basis. Other improvements include a provision which would eliminate the current requirement of investment in a country as a precursor to winning a procurement contract in that country and a permanent bid protest system that will settle complaints on a timely basis. Overall, under FTA, U.S. exporters would have access to more than one half billion dollars worth of additional procurement opportunities in Canada. Our companies are quite active in U.S. procurement bidding and look forward to even greater opportunities in Canada.

INVESTMENT

Another important achievement of FTA is that it codifies Canada's new investment openness. Canadian Prime Minister Brian Mulroney has already substantially liberalized the investment climate in Canada. He eliminated the New Energy Policy and Foreign Investment Review Agency, two programs that severely restricted foreign investment.

Following that line of action, Canada will renounce export commitments, import substitution, local content and local sourcing laws with the agreement's ratification. U.S. investors will be protected from sudden changes of Canadian Government policy.

Canada will retain, however, "Investment Canada," an agency that screens foreign investment. Fortunately, under the agreement, the agency will be limited to large acquisitions, with the vast majority of investments not under Investment Canada's jurisdiction.

The free-flow of capital across the border should greatly broaden U.S. investment opportunities. This capital should be a boon to Canadian industry and to interested U.S. investors.

OBJECTIONS

As stated earlier, it is somewhat disappointing that the agreement does not include a section on intellectual property. Although the U.S. won several concessions from the Canadians in the area of pharmaceuticals, it would have been helpful for our nations to draft a framework for future international copyright agreements, especially since the two nations' intellectual property laws are quite similar. Because Canadian law reflects a commitment to copyright protection similar to that of the U.S., we urge both nations to resume talks to come to a separate agreement on this issue.

We would also like the agreement to be universally accepted in Canada. Because the provincial governments in Canada have broader power than do state governments in the U.S., some data processing services are presently restricted in some provinces. The Administration promises to continue negotiations on this point, and we urge it to use all processes available to settle this issue before implementation.

CONCLUSION

CCIA has long been an ardent advocate of fair trade. The benefits of the FTA and the precedent it would set for future international agreements make it something we are proud to support. As a member of the American Coalition For Trade Expansion With Canada, we have long supported efforts to pen an agreement of this sort. The FTA is not perfect, but it will create a fair trade testing ground that will provide an impetus for worldwide trade expansion.

JOHN P. MURTHA
12TH DISTRICT, PENNSYLVANIA

COMMITTEE:
APPROPRIATIONS

Congreſs of the United States
House of Representatives
Washington, D.C. 20515

COMMITTEE ON
RECEIVED
FEB 09 1988
WAYS AND MEANS

February 8, 1988

The Honorable Dan Rostenkowski
Chairman
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of the Members of the Congressional Steel Caucus, we are writing to express our concern over steel trade between Canada and the United States and the Free Trade Agreement that has recently been concluded with Canada.

After Japan, Canada is the largest exporter of steel to the United States. As the enclosed material shows, since 1982, Canada has steadily increased its shipments of steel from their historic level of 2.4 percent to 3.9 percent in 1987. Along with the increase in shipments, shifting to higher valued products has also occured. Despite assertions by the U.S. Trade Ambassador to the contrary, Canadian steel producers have not been trading fairly nor has their steel shipments been declining. In fact, following the USX strike, Canadian steel penetration averaged 3.7 percent during the period February to November, 1987. Clearly, any improvement in Canadian penetration, is due more to the rapid and unexpected increase in the size of the U.S. market and not from any increased restraint on the part of the Canadian steel industry or Government.

So long as steel imports from Canada remain unchecked, the limits of the steel Voluntary Restraint Agreement (VRA) program will not be realized. As the attached correspondence with the Trade Representative shows, there is no desire on the part of the Ambassador to address steel trade problems with Canada. Therefore, we strongly urge that steps be implemented to reduce Canadian steel imports to a level more in keeping with their historic level.

Your immediate consideration of this situation is greatly appreciated.

Sincerely,

John P. Murtha

Ralph Regula
Ralph Regula

Dick Schulze
Richard Schulze

Congress of the United States
House of Representatives
Washington, DC 20515

CONGRESSIONAL STEEL CAUCUS

November 18, 1987

Ambassdor Clayton Yeutter
U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Dear Ambassador Yeutter:

On behalf of the Members of the Steel Caucus, we strongly believe that steel imports from Canada have undermined the steel Voluntary Restraint Agreement program. After Japan, Canada is the second largest single source of imported steel, accounting for 59 percent of the steel imports from non-VRA countries. Since 1984, Canadian steel shipments have surged by over 650,000 tons with a current annualized penetration rate of four percent.

Recent import data shows that steel imports from all major steel producing VRA countries have declined. The success of the VRA program only remains in doubt so long as Canadian steel imports remain unchecked. The Members of the Steel Caucus find it unconscionable that the ultimate success of the President's steel program and the well-being of an industry important to the nation's economy would be sacrificed for the benefit of another country's steel industry. Canada's own steel export monitoring program and the shift to higher valued steel products by Canadian producers, clearly shows that the Canadian steel industry, under government sanction, is deliberately exploiting the U.S. steel market. Immediate steps must be implemented to unilateraly restrain all steel imports from Canada.

Obviously, from the standpoint of the steel industry, negotiations with Canada have not been conducted in the best interest of the United States. The Steel Caucus will not look favorably upon the continued abandonment of the President's commitment to the domestic steel industry. Therefore, until measures are implemented to effectively restrain steel imports from Canada, the Members of the Caucus will not begin to favorably consider supporting the Free Trade Agreement with Canada.

Sincerely,

Joseph M. Gaydos
Joseph M. Gaydos
Chairman

John P. Murtha
Executive Committee Chairman

Richard Schulze
Vice-Chairman

Ralph Regula
Executive Committee
Vice-Chairman

THE UNITED STATES TRADE REPRESENTATIVE
Executive Office of the President
Washington, D.C. 20506

December 15, 1987

The Honorable John P. Murtha
Executive Committee Chairman
Congressional Steel Caucus
U.S. House of Representatives
Washington, D.C. 20515

Dear John:

I was disappointed to learn from your letter that the Congressional Steel Caucus might consider opposing the U.S.-Canada Free Trade Agreement because it does not include a VRA for steel. I hope you will reconsider that position, for obviously the agreement should be evaluated on the basis of its overall impact on the U.S. economy, and not on its effect on an individual industry, firm, or even Congressional district. This is probably the most significant bilateral trade agreement we've negotiated in the history of this country and, as such, merits a "big picture" evaluation rather than a parochial one.

Beyond that, one must realize that we did not seek to solve all the problems of these two nations in this one agreement. We've solved a lot of them, and we've certainly advanced the cause of bilateral commerce to the benefit of both nations. Compared to the status quo, the U.S.-Canada agreement is a huge step forward. So we should not be chagrined that it did not accomplish everything. We'll have ample opportunities in the future to work on steel issues and others that remain.

I hope the Caucus will recognize too that the President's Steel Program is working and working well. I met with a number of representatives of the steel industry a few days ago; they acknowledge the success of the President's program, and praised it as by far the most helpful U.S. government effort of recent years. When the President's program was established, the import penetration ratio was 26 percent; in 1986, the import penetration had dropped to 23 percent. For the first ten months of 1987, imports are more than 2 percent lower than the same period in 1986, despite increasing apparent consumption. The net result has been a steadily declining import penetration ratio, reaching the lowest level this year of 19.1 percent in October.

However, the President's Steel Program was never intended to cover countries that traded fairly. When the program was established, the steel industry indicated that they could compete with fairly traded imports. While the steel industry has demonstrated more than any other sector that massive unfair trade practices exist, Canada has never been one of those offenders. We have no unfair trade cases pending nor any significant affirmative dumping or countervailing duty findings.

Second, imports from Canada of steel mill products have been declining both in absolute and relative terms, largely from their own efforts to regulate exports to the United States. I have enclosed some charts indicating the trends in U.S. apparent supply, U.S. production, Canadian imports, and Canadian import penetration. The data clearly demonstrates the relationship between Canadian imports and U.S. production and shipments. For example, during the U.S. Steel strike of July 1986 through January 1987, U.S. production and apparent supply declined, only resurfacing to previous levels by the Spring of 1987. During this period, because of the drop in U.S. production, imports from Canada increased by about 100 thousand tons while U.S. production declined by almost 1 million tons. Imports from Canada started declining in March 1987 and, with the introduction of their monitoring system in June, imports have continued to diminish. Currently, import penetration levels have dropped to the upper range of their historic patterns.

Third, U.S. steel mills are running at maximum capacity levels and are quoting delivery dates almost six months in the future, demonstrating the tight supply that currently exists. I recognize that reasonable people may differ over projections about how long this expansion will last. For my part, I am convinced that demand for U.S. steel will continue to be strong because our economy is still strong, and our cost structure is becoming increasingly more competitive. The most recent Peter Marcus/Paine Webber report indicates U.S. production costs for steel are lower than costs in Japan, West Germany and France on an FOB basis. In addition, after transportation costs are added, steel from South Korea and Taiwan, c.i.f., also costs more than U.S. domestically produced steel. This is not only a testament to the effects of the declining dollar but to the industrial restructuring and modernization that the U.S. steel industry has accomplished since the President's Steel Program began.

Finally, the FTA has specific provisions, such as the country of origin rules, that benefit the steel industry. Canadian tariffs, which are on average double U.S. tariffs on steel mill products, will be eliminated, an important stimulus since Canada is our largest export market. In addition, the safeguards provision provides sufficient latitude to cover Canadian steel in the event that a positive 201 determination were to be made by the International Trade Commission. In a broader context, the benefits to the economy of the FTA will have spillover effects into the steel industry as a result of increased demand for manufactured goods.

I do understand the problems that continue to exist on specific steel products. For example, one issue that we have continued to press with the Canadians regards government subsidies for the production of rails. We are not satisfied thus far with the results of our efforts and will continue to press for a satisfactory resolution of this issue.

I hope the Steel Caucus will consider the FTA on its overall merits. I am confident that a balanced review of its probable impact on our economy, will demonstrate that the Free Trade Agreement is without doubt in the best interest of the United States.

Sincerely,

Clayton Yeutter

Enclosures

CY:clh

Issue Brief

Order Code IB87197

STEEL IMPORTS FROM CANADA AND THE PRESIDENT'S STEEL PROGRAM

Updated January 20, 1988

by

David J. Cantor

Economics Division

Congressional Research Service

STEEL IMPORTS FROM CANADA AND THE PRESIDENT'S STEEL PROGRAM

SUMMARY

Steel imports from the more than 40 countries not covered by voluntary restraint agreements (VRAs) under the President's steel program explain in large part why the import market share targets of the steel program are not being achieved. Canada is the most important of these non-VRA countries that are not subject to any limitations on the amount of steel they can export to the United States. Thus, Canada and the other countries outside of the steel program are able to take advantage of their situation, and respond to the domestic demand for imported steel. Their share of total U.S. steel imports rose from about 20% in 1985 to over 30% in 1986 and 1987.

Canada accounts for most of the steel exports to the United States from the non-VRA countries -- about 60%. Imports of Canadian steel on an annual basis are 525,000 tons more than in 1984 when the program began, and Canada's share of the U.S. market rose by 24% in this period -- to about 4.0%. In addition, the composition of Canadian steel imports into the United States shifted from semifinished steel to finished steel mill products. This shift is significant, because it indicates that the Canadian steel industry is capturing more of the value added in the processing of finished steel products.

The rise in Canadian steel imports places in jeopardy the achievement of the target market shares of the President's steel program, and raises the issue of whether or not and how to restrain U.S. imports of Canadian steel. Canada's government rejects any efforts to bring its steel industry under the President's program. But, concerned that its recorded exports to the United States might be inflated by the transhipment of steel manufactured in other countries and processed in Canada, the Canadian government instituted a monitoring system to track the flow of imported steel through the various stages of processing into finished products in Canada to its shipment to foreign and domestic markets. Initial data from this system indicate that virtually all Canadian steel exports to the United States originated in Canada.

The surge in Canada's share of the U.S. steel market (and the shares of other countries not covered by the President's steel program) has given rise to several legislative initiatives to further reduce steel imports. Two global quota bills have been introduced in the 100th Congress that would, if enacted, effectively force Canada to reduce its steel exports to the United States. One bill has been introduced in the 100th Congress that would impose a quota on steel imports from Canada, if Canada failed to negotiate a voluntary export restraint agreement under the provisions of the steel program. Another bill, introduced in the 100th Congress, would extend the President's program for 3 years, and provides discretionary authority to the President to take unilateral action against Canada and other non-VRA countries that do not negotiate VRAs. The trade bills passed by the House and Senate also contain provisions that could indirectly affect the volume of steel imports entering the United States from Canada.

ISSUE DEFINITION

While total steel imports have fallen both in volume and as a share of the U.S. market since the President's steel program went into effect, steel imports from Canada have risen in both volume and U.S. market share. This is because Canada is not subject to any restraints under the President's program. The rise in Canadian steel imports places in jeopardy the achievement of the targets of the President's program, and raises the issue of whether or not and how to restrain imports of Canadian steel.

BACKGROUND AND ANALYSIS

The Context of the President's Steel Program

The President's steel program was a response to the surge in imports of steel products in the early 1980s, and, especially, in 1984, when they supplied more than 26% of the U.S. steel market. President Reagan wanted to redress any injury to the domestic industry found resulting from unfairly traded steel imports. He also wanted to give time to the steel industry to modernize sufficiently to become internationally competitive.

Rejecting unilateral quotas or tariff surcharges as an approach to achieving his objectives, the President directed the United States Trade Representative (USTR) to negotiate voluntary export restraint agreements (VRAs) with major steel-exporting countries for a 5-year period from Oct. 1, 1984, through Sept. 30, 1989. In establishing the steel program, the President set as a target an import market share of 18.5% for finished steel mill products; no goal was stated for semifinished steel, although the USTR indicated that their imports were ideally to be held to about 1.7 million tons in each year. Congress endorsed the President's program when it subsequently passed the Steel Import Stabilization Act of 1984 as Title VIII of the Trade and Tariff Act of 1984 (P.L. 98-573). Among other provisions, the Steel Import Stabilization Act of 1984 specified a range of steel import market share targets for all steel products (including semifinished steel) from 17% to 20.2%.

Since October 1984, 20 VRAs have been negotiated with Australia, Austria, Brazil, China (PRC), Czechoslovakia, East Germany, the European Community (not including Portugal and Spain), Finland, Hungary, Japan, Mexico, Poland, Portugal, Romania, South Africa, South Korea, Spain, Trinidad and Tobago, Venezuela, and Yugoslavia. These VRAs allocated about 16.8% of the U.S. finished steel product market and imports of about 2 million tons of semifinished steel to the 20 countries.

As a result of the VRA program, steel imports have fallen substantially -- from 28.9% of the market in September 1984 to 21.4% of the market in the first 10 months of 1987. The VRA countries are generally in compliance with their agreements, exporting less of both finished and semifinished steel to the United States than permitted by their VRAs.

Canadian Steel Imports and the Targets of the President's Steel Program

Steel imports from the more than 40 countries that do not have VRAs explain in large part why the import market shares of the steel program are not being achieved. These countries -- including Canada -- are not subject to any limitations on their steel exports to the United States; they have been able to take advantage of their situation, and respond to the domestic demand for imported steel.

Canada is the most important of these non-VRA countries, accounting for about 60% of the steel exports of the non-VRA countries to the United States. More important, U.S. imports of Canadian steel have risen on an annual basis by about 525,000 tons since 1984, and its share of the U.S. steel market increased by about 22% in this period. It is understandable, therefore, that there should be concern over the effect of Canada's steel exports to the United States on the achievement of the goals of the President's steel program.

Available data -- presented in table 1 -- indicate that Canada has been a major source of U.S. steel imports in the 1980s. In fact, Canada is second only to Japan as a source of foreign steel. Up to 1983, overall import penetration of Canadian steel ranged between 2.4% and 2.9%. But since 1984, Canada's share of the U.S. steel market rose from about 3.0% to about 3.9% in the first 10 months of 1987.

From 1980 through 1983, U.S. imports of Canadian steel averaged about 2.5 million tons each year. From 1984 through 1987, steel imports from Canada averaged over 3.2 million tons; the data for 1987 are annualized from the experience of the first 10 months of the year.

The data indicate a discernible shift in the composition of Canada's steel exports to the United States from semifinished to finished steel products. Up to 1983, semifinished steel imports loomed large in Canadian steel shipments to the United States; from 1980 to 1983, they totalled about 1.3 million tons, or about 13.8% of total U.S. steel imports from Canada. From 1984 through the first 10 months of 1987, semifinished steel imports from Canada totalled 667,074 tons, or about 5.4% of the total.

Up to 1983, Canada's share of the U.S. steel market for finished steel mill products was in the range of 2.2% to 2.4%. In 1984, its market share rose to over 3.0%, and has increased ever since: to about 3.1% in 1985, 3.5% in 1986, and to about 3.9% in the first 10 months of 1987.

The shift from semifinished to finished steel product imports from Canada indicates that Canada is increasing its exports of relatively high value steel products to the United States. Semifinished steel products require additional processing into finished steel products. By exporting relatively more finished products, Canada is able to capture the value added resulting from the process of the semifinished steel.

TABLE 1. U.S. Steel Imports From Canada
and Canadian Import Market Shares, 1980 - 1987

Year	Finished Steel Products (tonnage)	Finished Steel Products (%)	Semifinished Steel (tonnage)	Semifinished Steel (%)	Total Steel Imports (tonnage)	Total Steel Imports (%)
1980	2,266,861	2.43	102,640	5.41	2,369,501	2.49
1981	2,319,528	2.29	579,267	20.33	2,898,795	2.75
1982	1,658,277	2.22	185,922	11.36	1,844,199	2.41
1983	1,940,287	2.37	438,330	34.99	2,378,617	2.85
1984	2,901,511	3.02	265,797	9.63	3,167,308	3.20
1985	2,798,056	3.05	70,223	1.88	2,868,279	2.98
1986	2,989,888	3.46	213,171	6.24	3,203,059	3.56
1987 a/	2,958,936	3.94	117,883	3.30	3,076,819	3.91

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a/ First 10 months of 1987.

Compiled by CRS, using as sources: American Iron and Steel Institute. Annual Statistical Reports. Washington, various years; American Iron and Steel Institute. Net Shipments of Steel Mill Products. October 1987. Washington, 1987; American Iron and Steel Institute. Exports of Steel Mill Products. October 1987. Washington, 1987; and, American Iron and Steel Institute. Imports of Steel Mill Products By Country of Origin. October 1987. Washington, 1987.

Reactions to the Increase in U.S. Steel Imports From Canada

Both Canadian and U.S. government officials are aware of and concerned with the upward trend in both quantity and market share of Canadian steel imports into the United States. Canada maintains that its steel is traded fairly in the U.S. market, and should not be subject to any restrictions.

In addition, the data indicate that steel imports from Canada exhibit a declining trend in 1987. In the first calendar quarter of 1987, U.S. imports of Canadian steel averaged about 353,000 tons per month; in the second quarter, the monthly average was about 298,000 tons. In the third quarter of 1987, they averaged about 278,000 tons. In October, imports of Canadian steel amounted to 292,961 tons. The higher level of imports in the first half of the year might be explained by shortages of domestic steel resulting from the work stoppage at USX Corporation.

Still, the Canadian government has taken steps to insure that recorded U.S. imports of Canadian steel represent steel manufactured in Canada, and to identify the possibility that third-party countries may be transhipping steel through Canada to the United States. In June 1987, Canada established a monitoring system to track the flow of its steel imports through the manufacturing process and to its markets — foreign and domestic. Unaudited data reported in the press indicate that virtually all of Canada's steel exports to the United States originated in Canada.

The Reagan Administration has limited its activity in restraining imports of Canadian steel to periodic consultations with the Canadian government. The Administration monitors Canadian steel imports; reportedly, 3 of the more than 50 staff of the International Trade Administration assigned to the administration of the steel program are dedicated to U.S. steel trade with Canada. The Administration has, however, not approached Canada to enter into a VRA under the steel program. One possible reason for not actively attempting to negotiate a steel VRA is the potential negative effect of such an action on the outcome of the U.S.-Canada Free Trade negotiations.

Congressional concern with Canadian steel imports has become more intense as Canada's share of the U.S. steel market has risen. For at least a year, congressional delegations have met regularly with their counterparts in the Canadian parliament in both Canada and Washington to discuss their concerns over rising steel imports from Canada.

In 1987, legislation was introduced in both the House and the Senate that would impose unilaterally a quota on steel imports from Canada, Sweden, and Taiwan, if these countries failed to negotiate VRAs with the United States (H.R. 1102 and S. 441). Two bills to impose global quotas on steel imports were introduced in the House: H.R. 2062 would restrict steel imports to a 15% market share; H.R. 2743 would limit steel imports to 20.2% of the market, with the countries of origin being determined by an auction. One bill (H.R. 3127) was introduced to extend the President's steel program for 3 years, and authorize the President to impose quotas on steel imports from non-VRA countries that either do not enter into negotiations for or do not conclude a VRA. Both the House and Senate trade bills (H.R. 3 and S. 1420) contain provisions that would treat steel imports from non-VRA countries made from steel originating in VRA countries as products of the country of origin. All of these legislative initiatives address, directly or indirectly, the concerns that the targets of the President's steel program are not being achieved, and that steel imports from the non-VRA countries, including Canada, are a significant factor in the failure to achieve the import targets of the steel program.

LEGISLATION

H.R. 3 (Gephardt et al.)
Enhances the competitiveness of American industry and for other purposes. Introduced Jan. 6, 1987; referred to more than one committee. Passed the House Apr. 30, 1987.

H.R. 1102 (Murtha et al.)
Amends the Steel Import Stabilization Act. Introduced Feb. 18, 1987; referred to Committee on Ways and Means.

H.R. 2062 (Lipinski et al.)
Reduces unfair practices and provides for orderly trade in certain carbon, alloy, and stainless steel mill products, to reduce unemployment, and for other purposes. Introduced Apr. 9, 1987; referred to Committee on Ways and Means.

H.R. 2743 (Cardin et al.)
Revitalizes the United States steel industry. Introduced June 23, 1987; referred to more than one committee.

H.R. 3127 (Schulze et al.)
Provides authority for the negotiation of bilateral arrangements regarding imported steel products in order to implement effectively the national policy for the United States steel industry, and for other purposes. Introduced Aug. 5, 1987; referred to Committee on Ways and Means.

S. 441 (Heinz et al.)
Amends the Steel Import Stabilization Act. Introduced Feb. 3, 1987; referred to Committee on Finance.

S. 1420 (R. Byrd et al.)
Authorizes negotiations of reciprocal trade agreements, to strengthen United States trade laws, and for other purposes. Introduced June 24, 1987; referred to Committee on Finance. Passed Senate July 21, 1987. Senate incorporated this measure into H.R. 3, July 22, 1987.

FOR ADDITIONAL READING

U.S. Library of Congress. Congressional Research Service. Canada-U.S. negotiations on a free trade area [by] Arlene Wilson. [Washington] 1987. (Updated regularly)
CRS Issue Brief 87173

----- The President's steel program: background and implementation, by David J. Cantor. [Washington] 1986. 10 p.
CRS Report 86-658 E

----- Steel imports: is the President's program working? [by] David J. Cantor. [Washington] 1986. (Updated regularly)
CRS Issue Brief 86141

----- Trade [by] Arlene Wilson and George Holliday. [Washington] 1987. (Updated regularly)
CRS Issue Brief 87003

TESTIMONY OF

CONGRESSMAN LARRY E. CRAIG

BEFORE THE SUBCOMMITTEE ON TRADE

HOUSE COMMITTEE ON WAYS AND MEANS

MARCH 25, 1988

Thank you, Mr. Chairman, for this opportunity to submit testimony on the proposed U.S.-Canada Free Trade Agreement [FTA].

I am predisposed to support any trade agreement that moves all parties toward the ideal of a free and open market.

Regrettably, however, this proposed agreement falls far short of the ideal. In fact, it appears that the U.S. mining industry was a giveaway in the FTA negotiations -- a critical omission that should be a matter of serious concern to this Subcommittee, to all representatives of mineral-rich states such as my own state of Idaho, to those who are seeking a balanced agreement that truly benefits our country and, indeed, to any Member of Congress committed to protecting our national security.

I base my conclusion on the surprising presentation made by the Administration at a hearing held March 10, 1988 before the Subcommittee on Mining and Natural Resources of the House Committee on Interior and Insular Affairs, of which I am the ranking minority Member.

Our oversight hearing specifically targeted the FTA's potential impact on U.S. domestic mining and natural resource industries. To that end, we heard testimony from representatives of the Department of Interior, Department of Energy, U.S. Trade Representative's Office, labor, and the energy and mining industries.

The most surprising element of the Administration's presentation was not the information it provided, but the information it did not provide.

The Subcommittee discovered that the only analysis available on resource and mining interests affected by the FTA comes from official Canadian sources rather than our own government. The vast informational resources and expertise of the U.S. Department of Interior were utilized only in developing the FTA's energy chapter, but otherwise ignored during negotiations. Not only were the government witnesses before the Subcommittee ill-equipped to respond to direct questions about the potential impact of the FTA on our domestic mining and resource industries, but the supporting information they attached to their written testimony appeared to have been compiled by an entity of the Government of Canada.

Subcommittee Chairman Rahall and I have written to Secretary Hodel, noting the lack of any credible analysis of the FTA's effects on our domestic mining industry and strongly suggesting that he direct the Bureau of Mines to undertake an expeditious and thorough review of that issue.

Meanwhile, the absence of this information raises questions that should be of concern not just to the Subcommittee on Mining and Natural Resources, but also to this Subcommittee and all Members of Congress.

If our government does not have, and never has undertaken, an analysis of the FTA's impact on domestic mining and resource industries, we can assume that the Administration's current support of the FTA as a "truly reciprocal" agreement is based on an incomplete assessment of the agreement's impact on American interests. Any claim that the FTA represents a "balanced" proposal is, therefore, open to question.

Moreover, if our negotiators did not have the benefit of this kind information at any time during the negotiations, they could not have proceeded intelligently to advance or preserve the interests of these industries. It therefore behooves Congress to make a careful examination of this particular issue and take whatever remedial action is necessary before giving approval to the FTA.

It would be difficult to overstate the importance of the interests at stake. Canada's minerals and metals sectors account for approximately three percent of Canada's gross domestic product, almost 20 percent of merchandise exports and hundreds of thousands of jobs. Although mining and resource industries represent a small portion of the U.S. economy, it is an important portion. The health of these industries is critical to the health of the economies in many resource-rich states such as Idaho.

Furthermore, the significance to our national security interests is undeniable. The U.S. Government has a responsibility to protect our access to strategic and critical resources. Jeopardizing the American mining industry and thereby increasing our reliance on foreign resources directly counters that responsibility.

Congress should be particularly concerned about the FTA's potential impact on the uranium industry -- a domestic industry that has become non-viable, according to the Department of Energy, despite Congressional directives that DOE maintain its viability. Chapter nine of the FTA would allow Canadian-origin uranium to be enriched by DOE as if it were U.S.-origin uranium, thereby avoiding the non-enrichment provisions of 161[v] of the Atomic Energy Act. With Canada producing some 33 million pounds of uranium annually but using only 6 million pounds, this provision represents a threat of enormous proportions to the already-troubled U.S. uranium industry.

The issue of natural resource subsidies is a key to understanding the impact of the FTA on U.S. resource industries and to determining whether the FTA is truly a reciprocal pact or a one-way giveaway.

As we know from the U.S. timber industry's long fight against unfair stumpage fees, culminating in a negotiated settlement with the Canadian industry, our neighbor to the north differs fundamentally from us in both its definition of, and its justification for, government subsidies of industry. Our economy is principally market-driven; theirs is government-driven. Canada subsidizes to stimulate jobs and argues that government intervention serves economic development interests.

Government and industry sources in both Canada and the U.S. have cited numerous examples of government assistance to Canadian resource industries that have no parallel or equivalent in the United States, including: C$848 million in contributions to the private sector in FY87 by the former Department of Regional Industrial Expansion; C$134 million from the Federal and provincial governments for modernization of Cominco Ltd.'s lead smelter at Trail, British Columbia; C$300 million in Federal and provincial funds for smelter pollution control and modernization, including C$84 million for the Noranda copper smelter at Rouyn, Quebec and an 85 percent guarantee of C$15 million in financing for the Cyprus Anvil zinc mine, located in Faro, Yukon.

The FTA does nothing whatsoever to equalize such Canadian industry advantages. In fact, it is clear from the Canadian government's own report that Canada views such subsidization as entirely consistent with the agreement:

> "...governments throughout the world...commonly influence resource allocation in the primary sector, and...the mechanisms and reasons for achieving particular socioeconomic objectives vary widely. In Canada...regional development has been frequently linked to mining and mineral processing. **The Agreement does not inhibit Canada's right to support mineral development in all regions of the country.**" [emphasis added, The Canada -U.S. Free Trade Agreement and Minerals and Metals: An Assessment, p.21].

While FTA supporters respond to this complaint by pointing to the agreement's preservation of current U.S. trade law remedies, there is still reason for concern. First, the report cited above makes clear that one Canadian goal is to eliminate U.S. countervailing duty remedies rather than subsidies:

> "...the two governments will work toward establishing a new regime to address problems of subsidization and dumping...The goal of any new regime will be to obviate the need for border remedies, which are now sanctioned by the GATT Subsidy and Countervail Code, by developing new rules on subsidy practices **and relying on domestic competition law to cope with dumping.**" [emphasis added, ibid., p.21].

Second, the proposed binational dispute resolution panel raises as-yet-unanswered questions about the impact on U.S. trade law and the rights of U.S. industries. The role of governments before the proposed panels has been criticized by many industry representatives as well as the lack of specificity as to the panel composition, rules of conduct, disqualification of panelists or other provisions protecting the impartiality of the panel. Frankly, the mere fact that Canada views the settlement mechanism as an improvement over current U.S. enforcement mechanisms should be cause to examine this proposal closely.

In sum, Mr. Chairman, since the Administration has failed to take these critical interests into account, it is incumbent upon Congress to do so. I strongly urge this Subcommittee and all Members of Congress to include the FTA's likely impact on mining and resource industries in their consideration of the agreement, and to refuse to sacrifice these domestic industries upon the altar of economic efficiency.

Distilled Spirits Council of the United States, Inc.

February 2, 1988

Mr. Robert J. Leonard
Chief Counsel
Committee on Ways and Means
1102 Longworth House Office Bldg.
Washington, DC 20515

Dear Mr. Leonard:

This is in regard to the announcement by the Honorable Sam M. Gibbons that hearings on the proposed free trade agreement between the U.S. and Canada will begin on February 9, 1988.

The Distilled Spirits Council of the United States (DISCUS) is a trade association whose members produce or import in excess of 85% of the distilled spirits sold in the U.S.

DISCUS members wholeheartedly support the U.S./Canada Free Trade Agreement particularly as it relates to distilled spirits contained in Chapter Eight of the Agreement.

The listing, pricing, blending and recognition of Bourbon provisions in the Agreement have long been sought after by the members of this association as means of improving U.S. exports of distilled spirits to Canada.

With all of the above in mind DISCUS urges the Ways and Means Committee to move as expeditiously as possible on the Agreement.

Sincerely,

F. A. Meister
F. A. Meister
President/CEO

FAM:sas

1250 EYE STREET, N.W., SUITE 900 WASHINGTON, D.C. 20005 (202) 628-3544

THE FLORIDA FRUIT & VEGETABLE ASSOCIATION
P.O. Box 140155
Orlando, Florida 32814-0155
(305) 894-1351

The Florida Fruit & Vegetable Association (FFVA or Association) supports the major provisions of the U.S.-Canada Free Trade Agreement (FTA). FFVA believes the benefits of the FTA outweigh the detriments. However, FFVA is concerned about some issues which apparently have not yet been resolved or addressed.

Florida Fruit & Vegetable Association (FFVA)

FFVA is a private, non-profit agricultural cooperative of growers, shippers and processors of vegetables, citrus, sugarcane and tropical fruits. FFVA was organized under the laws of the State of Florida to provide a means of dealing with public and private agencies to aid in the recognition and solution of industry problems.

FFVA has a long history of international trade involvement on behalf of its members and is active today in many U.S. agricultural trade policy matters.

Free Trade Agreement (FTA)

Canada is a major, growing market for Florida's fruit and vegetables. Accordingly, to the extent that the FTA provides a greater opportunity for us to sell our produce to Canada, we support the FTA. We support the stated benefits of increasing our markets in Canada with no tariff barriers and with fewer non-tariff barriers. FFVA has always supported the concept of free trade as long as it is fair trade.

We support the stated intention of eliminating all subsidies which artificially distort the market in agricultural trade. As you know, Mr. Chairman, Florida's fruit and vegetable growers historically have not asked for, nor received, subsidies or government assistance of any kind.

Although FFVA is supportive of the FTA with Canada, we wish to bring to your attention a number of issues of concern to us. In addition, we note for the record that our support for this FTA does not mean we will support other FTA proposals. Indeed, the record will show FFVA first supported and now opposes the Caribbean Basin Initiative; FFVA opposed the U.S.-Israeli FTA; and we would oppose any such agreement with Mexico, principally on the grounds that with respect to fruits and vegetables, Mexico has not competed fairly in the U.S. and Mexican markets.

FFVA's Concerns with the U.S.-Canada FTA

Principally, FFVA is concerned with the area of non-tariff trade barriers. Despite the promise that such barriers will be eliminated, there appears to be little hard evidence of how that will be achieved. It is important to harmonize each country's technical requirements. It is equally important to have a time-frame in which to achieve these goals.

Congress can play an important role here by conditioning its support of the FTA on an agreement as to time frame and specific consultative processes needed to fulfill the goals of the FTA. More particularly, Congress should insist that agencies like the Environmental Protection Agency and the Food and Drug Administration participate with their Canadian government counterparts in harmonizing public health and food safety requirements. This is quite important and could set an important precedent in light of the current GATT negotiations if acted upon quickly.

Other technical non-tariff barriers such as packaging and labeling requirements also should be addressed fully and promptly.

FFVA is concerned with the FTA provision concerning the rule of origin eligibility for tariff treatment. To the extent that this rule perpetuates artificial barriers, contradictions or discriminatory practices, these should be eliminated.

FFVA also is concerned about transshipments of products through Canada to the United States in a duty-free status which would not be permitted if imported directly into the United States.

FFVA is concerned that Canada may succumb to internal pressures and arbitrarily and unfairly reimpose duties on horticultural products. A fair bi-national dispute settlement procedure is critical to the success of the FTA. Congress must insist that our government commit itself to developing the full, proper and prompt implementation of the FTA on the issues addressed and on those not addressed. The fact that some important issues are unresolved should cause Congress enough concern to seek a firm commitment to promptly develop and implement the FTA.

Conclusion

On balance, FFVA believes the FTA will be of benefit to Florida's fruit and vegetable growers and, therefore, we support the FTA. However, Congress must insist that our government carefully (but promptly) implement and then monitor the FTA.

Accordingly, in view of the foregoing, the Florida Fruit & Vegetable Association urges ratification by Congress of the United States-Canada Free Trade Agreement.

STATEMENT OF GENERAL MOTORS

General Motors welcomes this opportunity to offer comments to the House Ways and Means Trade Subcommittee in support of the United States-Canada Free Trade Agreement (FTA).

The negotiations for a FTA between the U.S. and Canada were begun in the hope that such negotiations would: Lead to the removal of trade barriers between our countries; provide a forum for resolving trade disputes between the U.S. and Canada; and, set an example of international cooperation for the upcoming GATT negotiations.

As the largest vehicle manufacturer, parts manufacturer and private sector employer in both countries, we believe the FTA will encourage economic growth in both countries and benefit our customers and employes. The U.S. motor vehicle industry has enjoyed limited duty-free trade with Canada since 1965 under the provisions of the Automotive Trade Products Agreement (the AutoPact). Our experience shows that freer trade promotes economic growth and job opportunities on both sides of the border. The FTA would allow other industries and their employes to share in these advantages.

The FTA provides an important demonstration of how two countries can open their borders to each other for the best interests and mutual gains of both nations. The agreement would lead to the end of tariffs, the reduction of other trade barriers and an overall clarification and simplification of the processes that guide trade between our two nations.

As a result, costs would be reduced, processes could be streamlined, and consumers and workers in both economies would benefit from more efficient production and higher-quality products.

The FTA would preserve the AutoPact for domestic vehicle manufacturers and allow foreign-owned U.S. auto plants to export duty-free to Canada if they have sufficient North American content. The agreement further provides immediate relief for some problems that have strained U.S.-Canada automotive trade relationships and sets out a plan for continued progress towards the elimination of remaining barriers. Domestic parts manufacturers also stand to benefit by the elimination of tariffs and provisions that encourage North American sourcing of parts. To fully appreciate how the FTA improves the competitive position of the U.S. automotive industry, it is helpful to review the circumstances under which the AutoPact developed and its evolution over time.

History of the Autopact

Prior to the AutoPact, Canadian automotive production was protected by high tariffs and local content requirements that necessitated production at inefficient levels of output. In an effort to promote more efficient production, the Canadian government adopted measures to encourage exports. Objections by U.S. parts producers led to the first U.S.-Canada free trade negotiations in 1965. The AutoPact was the product of those talks.

The 1965 AutoPact provided for the conditional duty-free flow of new vehicles and original equipment parts between the U.S. and Canada. The U.S. limited duty-free entry from Canada to vehicles meeting a 50 percent North American (U.S. plus Canada) rule of origin requirement, to prevent third countries from avoiding U.S. tariffs by shipping through Canada. Canada restricted duty-free imports to automotive manufacturers which agreed to certain production, content and investment conditions, referred to as the "safeguards". However, unlike the U.S., Canada extended to AutoPact members the right to import components and vehicles duty-free from any country into Canada provided they complied with the safeguards.

Following adoption of the AutoPact, U.S.-Canada automotive trade volume increased 24-fold in 20 years and now accounts for one-third of all U.S.-Canadian trade. Additionally, the agreement significantly loosened restrictions on the use of U.S. parts in Canadian vehicles.

Changing Competitive Conditions

When the AutoPact was drafted, the U.S. automotive industry was pre-eminent in world markets. But many changes, unforeseen then, have transpired. The motor vehicle industry has matured into a global industry, and one outcome of this change is the growing interests of third country vehicle manufacturers in North America. Domestic producers and the U.S. and Canadian governments have adjusted to the increasing presence of imports and transplants. In some cases, this adjustment has introduced

new strains on the U.S.-Canada trade relationship. For example, in efforts to attract new automotive investment from overseas firms, Canada reinstituted a duty-remission program that allows foreign companies to earn rebates of Canadian duties on imports from third countries by exporting Canadian-made automotive parts to the United States or elsewhere.

The free trade negotiations were needed to temper a potentially difficult situation. It would have been desirable for the talks to have resulted in the elimination of all trade barriers between our two countries. But, the FTA has made important strides and has established the groundwork for freer trade.

The Free Trade Agreement Automotive Provisions

The proposed FTA eases some of the growing strains affecting automotive trade by addressing some of the most troublesome problems. It also establishes a select panel to address emerging automotive industry issues.

Both countries agreed to a more rigorous rule of origin definition to determine eligibility for duty-free shipment between the two countries. The decision to use direct cost of manufacturing instead of a value-added calculation would raise the level of North American content required to qualify for duty-free treatment.

The Canadians would end duty-remission programs. Continuation of these programs could have distorted investment decisions regarding the location of parts and assembly operations. The FTA requires Canada to eliminate export-based duty remission programs immediately and production-based programs by 1995. Although the goal was the immediate termination of all such programs, assurance that these programs will end at a designated time will discourage investment decisions from being based on temporary tariff considerations.

The Canadians will also phase out remaining tariffs on automotive parts and components and allow the sale of used vehicles imported from the U.S. The AutoPact allowed the auto industry to integrate production processes with parts and components made on both sides of the border. The phase-out of remaining tariffs, including duties on tires and aftermarket parts, should encourage further efficiencies and coordination of the production process.

The FTA preserves the benefits of the AutoPact for existing members by "grandfathering" it with minor changes. In response to concern in the U.S. that extending AutoPact eligibility to third-country producers would bias their production decisions towards Canada, no additional firms would be allowed to join the AutoPact. GM's joint venture with Suzuki, CAMI, however, will have the opportunity to become a member of the AutoPact if it meets the Canadian conditions for duty-free entry.

CAMI's status is attributable to the fact that, unlike other third-country ventures, it is committed to having a high level of

North American content. Furthermore, CAMI is the only new firm in Canada with a signed agreement with the government of Canada to meet the AutoPact provisions. That agreement was signed prior to the commencement of negotiations on the FTA.

Currently, U.S. firms can receive tariff reductions for goods imported through foreign trade zones from third countries. The FTA would limit the use of foreign trade zones and duty-drawbacks for goods later exported to Canada. These provisions will increase the cost of importing parts into the U.S. for vehicles produced for export to Canada. However, these costs are minimal when weighed against the substantial benefits offered by the FTA in promoting efficiency and growth for the U.S. motor vehicle industry.

Other Benefits of the FTA

The proposed agreement should promote a more dynamic trading relationship between the U.S. and Canada. This is important because of the tremendous volume of cross-border trade. Both the overall climate of cooperation and specific measures to facilitate dispute resolution should smooth transactions on a day-to-day basis.

The FTA also provides evidence to the world trading community of U.S. willingness to pursue more liberal trading agreements with like-minded countries. In addition, many of the specific elements of the FTA, especially those dealing with trade in services and investment, should serve as precedents for the Uruguay Round of multilateral trade negotiations.

Conclusion

In conclusion, General Motors recognizes that the Free Trade Agreement is not a perfect document. However, it will vastly improve the U.S.-Canada trading environment. While restrictions may remain, the agreement represents a major advancement over the status quo and in the process sends positive signals around the world that the two greatest trading partners can reach such a wide-ranging and clearly mutually beneficial agreement. We urge you, therefore, to support the FTA and, by doing so, to promote economic growth in the United States.

THE CHAMBER
GREATER SEATTLE CHAMBER OF COMMERCE

STATEMENT OF

BRUCE MAINES
CHAIRMAN, BOARD OF TRUSTEES
GREATER SEATTLE CHAMBER OF COMMERCE

SUBMITTED TO

THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES

February 26, 1988

* * * * * * * * * * * * * * *

Chairman Gibbons and Members of the Committee:

On January 12, 1988, the Board of Trustees of the Greater Seattle Chamber of Commerce adopted a resolution urging Congress to approve the U.S.-Canada Free Trade Agreement. The resolution was developed by the Chamber's International Trade Issues Subcommittee, which consists of experienced government affairs and international trade professionals. A copy of the resolution is attached.

With the removal of the provisions relating to the maritime industry, the Seattle Chamber believes that the Agreement's overall economic impact on the Seattle area should be quite positive. In a broader sense, the Agreement will provide a shot-in-the-arm for free and fair trade, a regime on which the Seattle area is highly dependent.

Of particular concern to the Seattle Chamber is the likelihood that the Agreement will become enmeshed in the politics of the pending Omnibus Trade Bill. The Agreement should be considered alone, on its merits, and should in no way be held hostage in the ongoing debate between Congress and the Administration over trade remedy reform.

On behalf of the Greater Seattle Chamber of Commerce, I urge you to support swift approval of this landmark pact.

Attachment

THE CHAMBER
GREATER SEATTLE CHAMBER OF COMMERCE

APPROVED
by the
BOARD OF TRUSTEES
of the
GREATER SEATTLE CHAMBER OF COMMERCE

January 12, 1988

The Greater Seattle Chamber of Commerce supports the approval by the United States Senate and House of Representatives of the agreement establishing a free trade area between the United States and Canada. The Agreement should be approved expeditiously, and should not be approached as part of the continuing debate over omnibus trade legislation.

The Agreement will increase opportunities for an expansion of trade in goods and services and investment between the United States and its largest trading partner. The Washington State economy stands to gain significantly. Although some businesses will encounter difficulties in the face of new foreign competition, the economies of both the United States and Canada will benefit.

The Agreement also advances the larger cause of international trade, standing as a hopeful sign that the trend toward increasing restrictions on trade and investment can be reversed.

BACKGROUND

The Trading Relationship

The U.S. and Canada are each other's largest trading partners, and maintain the world's largest bilateral trading relationship. Merchandise trade between the two countries totaled $123.6 billion in 1986, accounting for 21 percent of total U.S. trade in goods. Importantly, approximately 90 percent of U.S. exports to Canada are manufactured goods.

The Pacific Northwest is heavily involved in trade with Canada. According to Canadian Government statistics, Washington, Oregon, Idaho and Montana did $4.9 billion worth of business with Canada in 1986. Exports to Canada supported approximately 36,000 jobs in the four states. This does not include the millions of dollars spent by citizens of both countries crossing the border on casual visits.

Procedures

Because of the friendly political relations between the two countries and the complementarity of their economies, an open trading policy has been a long-standing goal; all previous attempts have failed. Following a formal request for talks by Prime Minister Mulroney, and Congressional endorsement, negotiations began in May of 1986. In spite of several setbacks, negotiators reached an agreement just before their deadline on October 4, 1987.

Congress will consider the Agreement under the "fast-track" procedures for bilateral trade agreements which are authorized in the Trade Act of 1974. Under these procedures, Congress has 90 legislative days to complete consideration of the Agreement after the President has submitted it to Congress along with the implementing legislation. Under the fast-track, Congress may not make any changes in the agreement, and a simple majority of both Houses is required for passage.

The Agreement

In general, the Agreement calls for the immediate elimination of many tariff and non-tariff barriers between the two countries, and a phasing out of all remaining tariffs and certain non-tariff barriers over the next 10 years. Important non-tariff barriers due for elimination include those affecting certain agricultural products, energy, and alcoholic beverages. Canada's controversial duty remission program for automotive trade will be eliminated, as will the Canadian embargo on used cars.

Several other irritants to trade with Canada will be eliminated or reduced. New mechanisms are introduced to ensure consistent product standards and to attempt to harmonize standards-related measures. Certain "buy national" restrictions on government procurement will be reduced.

Also of great importance is the Agreement's provision on trade in services, investment and temporary entry for business purposes. This is the world's first truly comprehensive attempt to liberalize services trade by providing national treatment. This liberalization of services trade will apply, for example, to telecommunications, computer services, financial services and tourism. The Agreement also provides for national treatment of direct investments.

Finally, the Agreement makes progress on the difficult matter of trade disputes. Existing national laws on dumping and subsidies will remain, but disputed decisions may be appealed to bi-national dispute settlement panels.

The Impact

In addition to the obvious benefit to consumers in both the U.S. and Canada, the Agreement will have a positive impact on the economies of both countries. Since U.S. - Canada trade accounts for a larger percentage of Canadian GNP than it does for U.S. GNP, Canada may enjoy a proportionally larger benefit. The U.S., however, will likely enjoy a larger increase in trade in dollar volume.

The agreement should increase U.S. exports to Canada substantially. In general, Canadian tariffs are much higher than U.S. tariffs, so that individual U.S. firms should see their price competitiveness in Canada increase dramatically.

In Washington State, the agreement will be helpful to local firms for whom Vancouver and Victoria are logical parts of a regional marketing effort. For example, the removal of discriminatory pricing systems will allow the Washington State wine industry to expand into British Columbia. Similarly, the investment provisions offer substantial opportunities to Northwest companies seeking to expand their operations into Canada. The Agreement's energy provisions will allow continued access by the State to Canadian natural gas.

A number of controversial issues of concern to Northwest industries have not been affected. The formal agreement resolving the Canadian lumber import dispute, for example, has been left intact. While the Agreement will undoubtedly force adjustments in certain industries facing increased foreign competition, the overall economic impact on the Northwest should be quite positive.

The agreement has a significance beyond its immediate impact on the two countries. As the international economy has become increasingly complex in the past two decades, the principles of fair and open trade have become endangered. The agreement between the U.S. and Canada is a welcome initiative. If it were to fail, it would bode ill for the future of the world trading system. The inability of two countries with so much in common to reach a trading agreement would cast doubt on the ability of the 90 diverse nations negotiating within the General Agreement on Tariffs and Trade to do so.

BEFORE THE HOUSE WAYS AND MEANS COMMITTEE

STATEMENT OF
JULIAN B. HERON, JR.
MARCH 16, 1988

THE U.S./CANADA FREE TRADE AGREEMENT AS IT RELATES TO AGRICULTURE

My name is Julian Heron. I am a partner in the firm of Heron, Burchette, Ruckert & Rothwell. The following written comments are submitted on the Free Trade Agreement as it relates to and affects American agriculture. Although I drafted the Agricultural Policy Advisory Committee's report on the Agreement, the views expressed in this statement are my own. The following assessment will focus first on the Agreement's overall economic and trade policy significance for American agriculture, then on individual sectorial gains and losses.

A free trade area with Canada in agriculture and other areas only makes sense. The United States and Canada have long shared a common border and a high degree of economic interdependence in agriculture. Cross-border agricultural shipments are now at $4.4 billion. We share a reputation as two of the world's most efficient agricultural producers. We both play major roles in world agricultural trade. We have similar philosophies on agricultural reform. In several direct and indirect ways, the Agreement should enhance these common attributes and objectives to the individual and collective benefit of the two nations.

The main benefit of the Agreement for United States agriculture may lie not in its immediate access gains, since there are relatively few of these, but in its implications for the new round. These implications are important and worthy of some discussion, since the greatest gain for American agriculture -- and some would argue its only salvation -- will be multilateral, not bilateral, reform. To the extent the Agreement has advanced multilateral reform consistent with U.S. objectives, it is of clear and significant benefit to American agriculture.

The mere formation of an alliance is meaningful in this regard. Because our countries will be working towards a unified market in agriculture, our multilateral trade objectives should also eventually merge. As our goals unify, our negotiating strength and leverage become greater. There have been examples of this in the past. When the European Free Trade Area was formed, for example, the European Economic Community's multilateral negotiating hand was substantially enhanced.

This newly-formed negotiating alliance is most explicit on agricultural subsidies. Both countries have expressly agreed that their primary goal will be to achieve on a global basis the elimination of subsidies, direct or indirect, that distort agricultural trade. This helps to formalize the United States' negotiating objectives and sends a signal to those countries less committed to subsidy elimination that the United States and Canada are serious about achieving agricultural reform.

The tariff provisions of the Agreement should send another beneficial signal to GATT-member countries. No agricultural tariffs were taken off the table. All will be eliminated on a reciprocal basis in ten years or less. This is what the United States is setting out to accomplish in the Uruguay Round. Although the agreement with Canada may have been achieved in a friendly, easier negotiating environment than will be the case multilaterally, the United States has nevertheless established a useful prototype.

The same is true regarding the Agreement's commitment to harmonized health, safety, packaging and labeling standards. Since this is one of the United States' four primary objectives during the new round, it needed to be advanced bilaterally. As the task forces established in this section get underway, U.S. negotiators will need to be mindful that they are establishing a model for multilateral talks. The House Ways & Means Committee can help encourage and promote expeditious results.

Having said all this, there are some aspects of the Agreement that may not bode as well for the United States' multilateral agricultural objectives and may limit the Agreement's bilateral benefit. At the conclusion of the negotiations, the elimination of many nontariff barriers was not possible, raising the question of how achievable it will be in a multilateral setting. To be sure, resistance was encountered on both sides of the border. Canadian poultry and egg quotas proved hard to negotiate, but so, too, did U.S. sugar quotas. Over the next several months, the Executive Branch together with Congress will need to consider carefully how these and related difficulties can best be overcome or minimized in Geneva when a multilateral commitment to eliminate nontariff barriers is sought.

What has been discussed to this point are the larger, perhaps more indirect, multilateral benefits and concerns arising from the Agreement. The gains in this regard far exceed the losses, and on this basis alone deserve solid Congressional support.

In sheer bilateral terms, however, the Agreement is also worthy of support. Its premise and direction are favorable, and the concessions achieved, although limited, are essentially balanced.

In general economic terms, it is fair to say that one of the greatest strengths of the Agreement may simply be that it will stimulate bilateral trade in all areas of commerce, not only agriculture. Broad-based economic growth will benefit farmers in both countries.

In more specific terms, clear access gains were achieved in some areas. The tariff concessions will be especially beneficial to certain U.S. fresh fruits and vegetables, for example. Tariffs generally run the highest in this sector, particularly on items subject to high seasonal tariffs. Because the United States exports roughly five times more horticultural products to Canada than it imports, it stands to gain the most from these concessions.

The United States also has made considerable progress in advancing access to Canada for wine and distilled alcoholic beverages. The market will not be completely opened in this area, but, once the tariffs have been eliminated, it is projected that U.S. wine sales to Canada should increase by $40-$60 million a year.

Although not true of all grain sectors, barley and oats should benefit from the Canadian commitment to eliminate import licenses. The U.S. malting barley industry may be the principal beneficiary.

If properly implemented, another clear gain will be the commitment to harmonize bilaterally the technical regulations and standards governing trade in agriculture, food, and beverages. Those that should benefit most include meat, animal feed, certain fruits and vegetables, and a host of other sectors in which differing national standards and disputes have disrupted trade.

Granted, in several sectors, the United States got less than it had hoped to achieve. Canadian wheat import incenses will continue to be a problem. Its poultry and egg supply management scheme remains in place, although the United States' guaranteed access has been enlarged. Its potato restrictions on bulk shipments and consignment sales will not be affected.

Yet, even in these areas, few have argued that United States officials have negotiated away American agriculture or have created an imbalanced Agreement. Rather, where concerns have been raised, they derive mainly from a disappointment that the accord does not go far enough in removing long-standing impediments to trade. This should not be a basis for blocking the Agreement, particularly since a mechanism has been established for continued negotiations.

In most instances were bilateral concessions have been made, they are balanced and should move the United States in the direction of trade liberalization and growth, both bilaterally and multilaterally. At a time when the global tendency in agriculture continues to be trade restriction, not growth, these provisions should send a much-needed signal at home and abroad that the United States and Canada are committed to agricultural trade expansion. Once implemented, the accord should create an improved bilateral and multilateral trade environment, enhancing the prospects for further reductions in cross-border and third-country agricultural trade barriers. Given these gains, as well as those likely to result from across-the-board trade expansion, the Ways & Means Committee is urged to support the Agreement and assist in its enactment.

BEFORE THE:
SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
U. S. HOUSE OF REPRESENTATIVES

March 18, 1988

TESTIMONY SUBMITTED ON THE UNITED STATES-CANADA FREE TRADE AGREEMENT

BY

JAY MAZUR, PRESIDENT, INTERNATIONAL
LADIES' GARMENT WORKERS' UNION, AFL-CIO

I appreciate the opportunity to submit testimony for the record on the United States-Canada Free Trade Agreement on behalf of the more than 180,000 members of the International Ladies' Garment Workers' Union. Our members, both in the United States and in Canada, have a deep interest in whether the FTA will affect their jobs. This concern has been intensified in recent years as imports of apparel have grown rapidly in both countries to the detriment of employment in each country.

In this testimony I shall confine my comments to the effects of the FTA on the apparel industry and the employment it provides.

The Agreement permits unlimited duty-free entry into the United States of apparel made in Canada of fabric produced in Canada. Apparel manufactured in the United States of fabric made in the U.S. would receive similar treatment in Canada.

However, duty-free entry from Canada is also permitted for up to 50 million square yards equivalent of foreign fabric in the form of apparel made of non-woolen fabric and 6 million square yards equivalent in the case of apparel made of woolen fabric. The quantity of apparel made in the U.S. of foreign fabric that would be permitted duty-free entry into Canada is about 20 percent of the amount allowed to Canadian shippers.

Shipment of made-up articles knit in Canada of foreign yarn would also be permitted to enter the United States duty-free for the first three years of the agreement.

These provisions permit and encourage the importation into Canada of fabrics and yarn produced in low-wage countries, conversion into apparel in Canada and their subsequent export to the U.S. at prices that would undercut U.S.-made products. Aside from any other considerations, domestic U.S. products could not be competitive at all.

Furthermore, the formal limit on duty-free entry of products made of imported fabric and yarn is likely to be less effective than might be anticipated. It is virtually impossible to determine by examination where a particular fabric or yarn has been produced and even more so after it is converted into apparel. Thus, documentation on the origin of the fabric or the yarn would have to rely on such proofs as invoices and affidavits. As Customs has found in other circumstances, it is not only easy to falsify such documents, but also that there is an incentive to falsify.

One can easily anticipate that large quantities of foreign-made apparel could also be mislabeled to show Canadian origin. This could also occur in the case of apparel produced in Canada made of imported fabric and claimed to be Canadian fabric in origin. This could raise the 50 million and 6 million square yard equivalent figures substantially.

The Agreement contemplates effective cooperation between the U. S. and Canada. As a practical matter, however, under the Agreement's provisions, violation could be extensive.

Apart from the physical inability to distinguish origin of textiles and apparel, the Agreement as written implies an ineffective enforcement effort. Importers and exporters are authorized to certify that the products meet the country of origin rules and, therefore, are entitled to receive FTA tariff treatment. This process would well become a self-serving invitation to fraud.

The clearly set forth aim of the FTA is to eliminate tariff and non-tariff barriers between the U.S. and Canada. Pursuit of this aim would lead to a reduction in the number of Customs agents at the border with the time and ability to subject products to careful examination and laboratory testing. This invites a virtually open border with self-serving paperwork given the most cursory examination before the products are waved ahead.

The Canadian government has agreed to cooperate to prevent violation. However, it really has no incentive to do so under the Agreement as drawn, since Canadian firms could profit from handling the mislabeled products.

The Agreement deals with the tariff status of goods according to country of origin. It does not, however, treat the status of products subject to quotas now in place between the United States and various apparel exporting nations around the world. Products shipped through Canada -- whether or not they are subject to partial manufacturing there -- may be dutiable upon entering the U.S. even though in general duties are being lowered on such products. Even if duty were included, prices may be sufficiently low to encourage circumvention.

Our Customs authorities would have great difficulty in determining country of origin of transhipped products so that they could properly charge the quotas of the appropriate country or countries. We fear that, in the interest of harmonious relations between our two countries, the easy way out may well be chosen, namely, to allow goods to enter as freely as possible.

My final comment relates to the general FTA prohibition on duty drawback on goods that qualify for duty-free treatment. This is a sound principle.. Permitting duty drawback would greatly encourage low-cost third party imports to be re-exported -- whether or not additional work is done -- at the expense of the other country.

However, an exception to this positive stance has been proposed by Canada and is still being explored, I understand. The exception would permit duty drawback on cheap imported fabric converted into apparel and re-exported to the United states.

If the proposal proceeds, it would constitute a subsidy by the Canadian government to Canadian apparel manufacturers. It would result in an important reduction in cost to Canadian manufacturers. If a U.S. firm imported the very same fabric and produced for the U.S. market, it would have to pay U.S. duty on the fabric. Its cost structure would, therefore, be higher than that of its Canadian competitor.

While this statement primarily focuses on impacts to the U.S. apparel industry, it should be noted that some undesirable impacts may also fall on the Canadian industry and its workers. Transhipment of goods through the United States is also a distinct possibility and can have deleterious effects in Canada which also suffers from low-wage apparel imports.

STATEMENT OF DR. PETER T. NELSEN, INTERNATIONAL TRADE COUNCIL

Mr. Chairman and Members of the Senate Committee on Finance. I am Dr. Peter Nelsen, President of the International Trade Council. We thank you for the opportunity to provide written testimony on the U.S.-Canada free trade negotiations.

The International Trade Council (ITC) is a trade association representing large and small businesses from the entire spectrum of exporting industries. Dedicated to defending and expanding free trade, overseas development and private sector investment, ITC is the original sponsor of the U.S. International Trade Center (USIT) and the International Development Institute. USIT is a permanent, year-round trade center designed to assist small, medium and large companies in entering the export market. USIT will provide 5,000 exhibitors with access to 400,000 foreign buyers annually; joint shipping, financing, insurance, and marketing arrangements. In addition, IDI also provides education, training, and technical assistance to exporters.

The Under States and Canada are great friends and neighbors. We share the world's longest undefended border and the largest trading relationship. Millions of Americans and Canadians freely cross the border to shop and visit each year. Our defense ties with Canada are more extensive and intimate than with any other Country. We work together through NATO, the North American Aerospace Defense Command (NORAD), and the Permanent Joint Board on Defense.

Nonetheless, despite our very close friendship a trade war with Canada is a distinct possibility if the current free trade negotiations fail. We are already in a trade skirmish.

In March 1985, Canada reinstated a trade provision that enabled foreign manufacturers to receive remissions of Canadian duties on imports from their home countries based on their exports to the United States. The United States has protested that this constitutes an export subsidy. In early 1986, under pressure from American timber companies, the U.S. imposed a 35 percent tariff on Canadian cedar shakes and shingles. Canada retaliated by increasing its tariffs on computer parts, books and a variety of other products. In October 1986, the U.S. Commerce Department determined that Canadian province softwood timber pricing constituted an export subsidy. To avoid a threatened countervailing duty, Canada imposed a 15 percent export tax on softwood lumber in December of 1986.

Canada in turn has begun flexing its own protectionist muscles. In March 1987, the Canadian government imposed a 67 percent countervailing duty on U.S. corn imports to counter American agricultural subsidies. That same month, Canada proposed to bar foreign firms from distributing films in Canada for which they held the U.S. distribution but not the worldwide rights. This proposal would reduce U.S. movie sales in Canada by about 20 percent.

America's protectionist impulse has been fueled by a myth. This myth claims that foreign imports are stealing American jobs particularly in manufacturing. That just is not true. The American economy created 8.4 million new jobs from 1978 to 1985 -- far more than Japan and Western Europe combined. In addition, U.S. manufacturing employment has held steady around 19 million since

1970, while total employment of production workers rose from 47 million in 1975 to 62 million in July 1985.

The cost of a trade war will be higher prices for American consumers and lost jobs for U.S. workers. The cedar shake and shingle tariff cost new home buyers an extra $800 according to the National Association of Home Buildings. The softwood lumber tax has been estimated to price 120,000 families out of the housing market in the next seven years and cost those who can still afford a new home $227 million annually. American jobs are lost when Canada seeks to protect its industries with stiff tariffs and limits American companies' access to its markets.

A free trade agreement could break this cycle of "tit for tat" protectionism and defuse the looming trade war. A free trade agreement would also yield several additional benefits. Canadian tariffs are must higher than ours on the average. Thus, phasing them out would benefit American exporters according to the Office of the United States Trade Representative, if Canada cut its tariff rates to the level of other industrialized countries, American exporters could increase their annual sales by $500 million annually. In return, Canada would be given secure access to the U.S. market. Elimination of tariffs would also modestly lower the cost of living for consumers. In return, Canada would receive secure access to the American market.

It has been estimated that a free trade agreement with Canada would raise the U.S. gross national product by $12-17 billion and create 500,000 to 750,000 jobs. Because Canada's economy is much more dependent on exports, it would receive proportionately an even greater increase in its gross national product.

A U.S.-Canada free trade agreement could also substantially promote the further negotiation and establishment of a North American Free Trade area. This proposal, introduced by Senator Phil Gramm and Congressman Jack Kemp, calls for a North American Free Trade Area that would include the U.S., Canada, Mexico, and the Caribbean Basin Initiative participants. This agreement would be reciprocal and provide for mutual reductions in trade barriers to promote trade, economic growth, and employment throughout North America. The Gramm-Kemp approach would provide strong incentives for other countries to negotiate reductions in trade barriers with the U.S. or face increased competition from those countries which do.

In order to realize these important benefits, we must not yield to the temptation to dilute the free trade agreement with single sector protectionism. Protection of a single industry always comes at the expense of the overall economy. A recent study by Arthur Denzau at the Center for the Study of American Business shows "that if the United States had imposed a 15 percent import quota on steel in 1984, as the steel industry sought, 26,000 steelworkers jobs could have been saved -- but at the cost of 93,000 jobs in the steel using industries. High prices for protected domestic steel would have made American automobile and durable goods producers less competitive." Moreover, the American consumer would pay much more in the form of higher prices for these goods than the wages earned in the jobs that would have been saved. The cost-benefit ratio in the case of footwear quotas was 9:1; in the case of steel and autos, 4:1.

Accordingly, ITC recommends that the free trade agreement (and all other trade legislation) contain a statement detailing the economic impact on and costs to the U.S. consumers as outlined in the Gramm/Kemp proposals for a North American Free Trade Area.

Most importantly, a free trade agreement should include agricultural services, investment and intellectual property rights to serve as a model for the more difficult and important ongoing General Agreement on Tariffs and Trade (GATT) negotiations. America blocked the formation of the International Trade Organization in the 1940's and effectively fought to remove agriculture from GATT rules in the 1950's. As a result, U.S. service companies and multinationals now face a "hodge podge" of rules governing trade in services and investment which vary from country to country. American farmers have lost tremendous markets to subsidized European agriculture due to this lack of GATT restrictions.

The free trade agreement should include a commitment to end the use of public subsidies and dumping in all sectors of the economy by the year 2000. This is similar to the U.S. approach recently set forth through recent GATT negotiations on agricultural policy. Subsidies and dumping encourage the use of countervailing duties and quotas by countries with competing industries. The net effect of this is the taxing of the many for the benefit of the few, increasing the cost of goods to consumers, reducing the creation of jobs and diverting the flow of investment capital to inefficient producers.

The International Trade Council proposes that a moratorium on countervailing duties and quotas be declared. The International Trade Commission and its counterpart, the Canadian Import Tribunal should be phased out and replaced with a joint panel to resolve unfair trade practices.

If we fail to establish a bilateral mechanism to resolve these disputes, American businesses and farmers could be further burdened by unilateral retaliation by Canada and other countries adopting the U.S. argument in the Canadian softwood lumber case that discretionary administration of public resources constitutes a subsidy. Under our own logic, the use of state industrial development bonds, government financed irrigation projects, pollution control easements or antitrust laws or antitrust exemptions by U.S. exporters could justify a foreign countervailing duty.

The status quo in trade with Canada and the rest of the world cannot be maintained, nor can we solve the problems through more quotas, stiffer tariffs or higher barriers. Retaliation breeds retaliation and American consumers and workers pay the price for "getting tough." The ongoing free trade negotiations with Canada offer a great opportunity to reverse this vicious cycle with reductions in trade barriers, creating incentives for other countries to join in or be squeezed out of the North American market.

STATEMENT OF JOSEPH E. SEAGRAM & SONS, INC.

This statement is submitted on behalf of Joseph E. Seagram & Sons, Inc. (Seagram) in response to the Subcommittee on Trade of the House Committee on Ways and Means press release of January 26, 1988, requesting comments on the United States-Canada Free Trade Agreement (CFTA).

Summary

Seagram appreciates the invitation of the House Committee on Ways and Means to comment on the CFTA. Free Trade between the United States and Canada would be an important accomplishment for our country and for world trade generally. We would like to do our part to make sure that this historic agreement becomes a reality.

We believe that extensive benefits will be derived from the more balanced and improved trade with Canada which will occur if the CFTA becomes operative. Seagram therefore urges Congress to approve legislation implementing this agreement.

In our view, the elimination of tariff barriers is the cornerstone of any fundamental free trade agreement. We applaud the success with which U.S. and Canadian negotiators were able to agree on the elimination of tariffs for nearly all products traded between the two countries. Seagram believes that these accomplishments merit Congressional approval.

Seagram admits that it will benefit from that portion of the CFTA (item number 2208.30) which will entirely eliminate the tariffs on distilled spirits, effective January 1, 1989. That our support for free trade transcends financial interest is evidenced by our opposition to the Wine Equity Act legislation of several years ago which also would have conferred a financial benefit on Seagram. We support free trade, without regard to short-term effects.

Seagram's Operations and Interests

Seagram is a New York-based corporation which is the leading manufacturer and marketer of distilled spirits and wines in the United States. We employ over 3,500 people throughout the United States representing 75 percent of all our North American employees. The company owns three distilleries and bottling plants, two in Maryland and one in Indiana. Seagram also owns one in Napa Valley's most distinguished wineries, Sterling Vineyards, as well as the Monterey Vineyard.

Seagram has also contracted to purchase all of the capital stock of Tropicana Products, Inc., which produces orange juice and other fruit juice based products at its facilities in Bradenton and Fort Pierce, Florida. Tropicana employs approximately 3,500 people. The Tropicana acquisition is expected to close in April, 1988.

Joseph E. Seagram & Sons, Inc. is the principal operating subsidiary of the Canadian corporation, The Seagram Company Ltd., based in Montreal. However, with affiliates in 27 countries, Joseph E. Seagram & Sons, Inc. directly manages the corporation's European and other international operations through its New York offices. We and our affiliates produce and market more than 700 brands of distilled spirits, wine, champagnes, ports and sherries in more than 150 countries. However, the United States and Canada account for approximately half of the company's total spirits and wine revenues.

In both the United States and Canada, the products of Seagram and its affiliates are subject to substantial customs duties and excise taxes. Moreover, spirits and wine are subject to additional taxation by governmental subdivisions within the countries in which those products are sold.

Seagram supports the balanced package of duty reductions contained in the CFTA. These reductions will encourage additional trade between the two countries and contribute to needed economic growth.

The Importance of the CFTA

In our view, the implementation of the CFTA is in the best interests both of the United States and Canada. These are major trading partners, and both have prospered over the years as a result of this partnership. By establishing an open trade relationship between the United States and Canada, the CFTA will provide an important step in strengthening the world's trading system. For while the immediate trade benefits of the CFTA are of interest to Seagram, we also recognize that the conclusion of this agreement gives additional momentum to future agreements, viz., the Uruguay Round of Multilateral Trade Talks and the European Community's agreement on corporate taxation harmonization.

We are dedicated to the goal of free trade. Of overall importance is the one undeniable fact that over the long term free trade benefits all.

Implementation of the CFTA would increase the efficiency of the North American economies and strengthen each country's ability to export into an increasingly competitive world market. Such a partnership would demonstrate a strong North American commitment to free and fair trade, and provide an example for the Uruguay Round that major trade issues should be resolved through negotiation rather than confrontation.

Free trade between the United States and Canada has often been a subject of discussion; however, the two countries have never come this close to achieving agreement. We believe that the two countries should take full advantage of this opportunity to strengthen their ties. If the occasion is missed, it will undoubtedly take many years to build enough momentum to revisit the idea of North American free trade.

Seagram has long endorsed policies which foster fair and open trade throughout the world, because history has proven that fair and open trade creates the greatest well-being for not only the United States, but for all countries. Accordingly, Seagram has supported such beneficial legislation as the Caribbean Basin Initiative and the Israeli Free Trade Agreement. We believe that the CFTA will facilitate more balanced, open trade with Canada and will yield similar, beneficial results for both countries in particular and for world trade generally.

Conclusion

Because of the extensive benefits to be derived by U.S. industries and consumers from the more balanced and improved trade that the CFTA would foster, Seagram urges Congress to support legislation to implement this important agreement. Should we be able to provide any specific information or answer any further questions regarding the CFTA, we would be pleased to do so.

Respectfully submitted,

Richard J Connor Jr for
David G. Sacks

David G. Sacks
President
Joseph E. Seagram & Sons, Inc.

STATEMENT BY CONGRESSWOMAN MARCY KAPTUR
SUBCOMMITTEE ON TRADE
OF THE WAYS AND MEANS COMMITTEE
MARCH 25, 1988

Mr. Chairman, I regret that I am not able to testify about the automotive provisions of the U.S.-Canada Free Trade Agreement (FTA) but I am grateful for the opportunity to submit written remarks.

Automotive trade comprises approximately one-third of the bilateral trade between the U.S. and Canada and represents the single largest sector of trade between the two countries. In 1986, the United States had a $3.7 billion deficit in automotive trade with Canada. The importance of this industry to the U.S. and the size of the deficit suggest that significant changes are needed in our trade relationship with Canada. The automotive provisions of the FTA, however, fail to make the necessary changes, at the expense of U.S. auto parts firms and their workers.

Changes need to be made in two key areas of the FTA governing trade in automotive products in order to remove some current distortions which benefit Canada and to create a more equitable trading relationship. The two changes are an increase in the Rule of Origin (standard of preference) from 50% to 60% and an immediate elimination of Canadian duty remission programs. Without these changes, the automotive provisions of the FTA can hardly be termed an agreement and should instead be labelled a concession in favor of Canadian auto employment and production.

As it is written now, the FTA would require a 50% Rule of Origin for automotive products to receive duty free treatment when entering the United States. Through the final hours of the negotiations, I worked closely with other Members of Congress and the U.S. negotiators in an effort to increase the percentage to 60%. This effort was rejected by the Canadian government, apparently at the urging of the Japanese and Korean transplants in Canada. It appears that the Canadian government is more interested in aiding the transplants, despite the important benefits a 60% Rule of Origin would provide to the Canadian and U.S. parts industries.

The Rule of Origin is used to determine the applicable tariff (generally zero) for a good. It is not a content requirement. Content laws require local sourcing in exchange for the right to sell in that local market. Goods that do not meet a rule of origin can still be sold in the U.S. or Canada--by paying the most favored nation duty rate rather than receiving duty free treatment.

We must recognize that Canadian economic and trade policy is oriented toward exporting all it can to the United States. Canada can derive major benefits as a manufacturer of products for the U.S. regardless of the Canadian content of those products. A tough Rule of Origin, therefore, becomes critical to encourage production for bilateral trade in products of U.S. and Canadian origin and to prevent either country from becoming a conduit to the other for third-country products. The rule of origin for automotive products trade is inadequate in this respect.

It is my understanding that under the 50% rule of origin an automobile manufacturer could import the engine and transmission, assemble them into a vehicle, and still have that vehicle be eligible for duty free treatment. The transplants in Canada have an incentive to do this because of the reduced Canadian duties with third countries under the duty remission programs, to be discussed in greater detail below. Vehicle manufacturers in Canada operating under the Auto Pact are virtually unlimited in their ability to import parts into Canada duty-free from third countries. It must be remembered that most of those vehicles will be exported to the U.S.

A 60% rule of origin would ensure that at least one of these major components is sourced in the U.S. or Canada. Given that we are entering into a bilateral free trade agreement, it is only proper that the primary benefits go to U.S. and Canadian parts suppliers, rather than third countries.

I would like to turn my attention to the Canadian duty remission programs. The FTA allows Canada to continue two duty remission programs for up to ten years, depending on the program and manufacturers involved. In 1965, the U.S. and Canada agreed to the Auto Pact in exchange for an end to Canada's duty remission programs. Despite this agreement, the programs continue unchallenged today and will continue for an additional ten years under the FTA. In my estimation, this demonstrates a total lack of commitment on the part of the Administration to U.S. auto parts suppliers.

Under the FTA, the export-based duty remission program will be continued through 1997 for exports to third countries, despite the fact that the General Counsel for the United States Trade Representative determined that such a program was a GATT-illegal export subsidy. With this program, Canada gives foreign-owned vehicle manufacturers that purchase Canadian parts for export a remission of duties on vehicles the manufacturers import into Canada. The Canadian subsidized parts will wind up competing at a distinct advantage against U.S. suppliers trying to sell parts to Japanese automotive manufacturers.

The production-based duty remission program will distort trade and investment in favor of Canada. Under this program, Canada gives foreign-owned vehicle manufacturers that purchase Canadian parts for use in their Canadian assembly operations a reduced duty on vehicles and parts the manufacturers import into Canada. The program limits sales by U.S. parts suppliers by providing a financial incentive for the transplants to purchase Canadian parts. Those U.S. parts suppliers who want to sell to Canadian transplants will face pressure to locate operations in Canada.

Although the program will be eliminated after eight years under the FTA, the economic effects will linger for some time. It is unlikely that transplant sourcing decisions will change after having been skewed to Canadian parts suppliers for many years. Those companies that choose to invest in Canada in order to sell to the transplants will surely not abandon their investment and relocate in the United States once the program is ended. The jobs remain in Canada and the production remains in Canada even after the duty remission program has ended.

The end result of the export and production based duty remission programs is to displace or severely limit sales of U.S. parts firms to Japan and to the Canadian transplants.

Once again, Mr. Chairman, I thank you for allowing me to submit these written comments. I hope they will be carefully considered as you weigh the merits of the U.S.-Canada Free Trade Agreement. While I believe that free trade between our two nations is a worthy goal, I do not feel that free trade has been achieved in the automotive sector. I believe that corrective action is warranted in the implementing legislation and I would be happy to work with you on the issues I have outlined in the automotive provisions.

RON MARLENEE
MONTANA

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March 23, 1988

Honorable Sam Gibbons, Chairman
Subcommittee on Trade
House Committee on Ways and Means
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

I appreciate that you have scheduled an opportunity for Members to have input on the U.S.--Canada Free Trade Agreement which is currently pending before your subcommittee. I ask that this letter be entered into the record for such purpose.

I have several strong reservations about the agreement as currently drafted. Foremost, the agreement does not completely address, nor does it resolve, problems facing U. S. producers of wheat and feed grains which arise due to the Canadian rail transport subsidy. Although the agreement purportedly reduces some adverse effect in regard to competitiveness of grains which may be shipped from Western terminals, it does not remove the clear advantage given Canadian growers whose product is shipped to the Great Lakes. In essence, we would give Canada free and unrestricted access to all U. S. markets east of the Mississippi River, while our own producers would be held at a competitive disadvantage in those same markets.

Current FTA language is also misleading and vague in outlining the method which will be used to determine "equalization" of farm subsidies between the two countries, and will also make it much more difficult for U. S. producers to pursue a remedy under section 22 of the Agriculture Act of 1933.

The Agreement addresses sugar and sugar-containing products in a very perfunctory manner, and grants to Canada concessions which are not reciprocal to any concessions to the U. S. industry. Since Canada continues to import large quantities of sugar from Castro's Cuba, it is most likely that freer access to U. S. markets will at least indirectly help support that Communist regime as Canada's domestic sugar needs are met with Cuban imports and their own production is diverted into American markets.

Likewise, the FTA in insufficient to meet the problems faced by U. S. pork producers in their continuing battle Sam against unfair and predatory Canadian trade practices. It does not remove Canadian federal or provincial subsidies which benefit Canadian producers and does not remove the current 30-day quarantine on hogs shipped from the United States into that country. Canadian producers are now allowed to ship an unlimited number of hogs into the U. S. without any restrictive health regulations. Furthermore, the Agreement does not solve the problem of Canadian dumping of processed pork products onto the U. S. market at subsidized prices.

Finally, Mr. Chairman, I am concerned that the Agreement will further weaken the domestic U. S. energy industry. With its current problems, this industry cannot afford any further damage which will certainly occur as Canada's producers are allowed virtually free and unrestricted access to our markets. Adding insult to injury, this would come at a time when Canada's policies have restricted U. S. access to markets north of the border, and have even restricted our investors' ability to protect themselves against losses by acquiring and developing energy assets in Canada.

For these reasons, I hope that your subcommittee will take the extra time necessary to examine the Agreement and its potential for immediate and severe economic repercussion on American agricultural and energy producers. I urge you to take a strong stand for fairness and true reciprocity, and to resist pressures which would have you approve the Agreement simply for the sake of having "something on the books" before the end of the current Administration.

Please feel free to contact me if you have further questions regarding any of these areas of concern.

Sincerely,

Ron

Ron Marlenee

RM:ch

STATEMENT OF CONGRESSMAN ROBERT T. MATSUI BEFORE THE TRADE SUBCOMMITTEE OF THE HOUSE WAYS AND MEANS COMMITTEE ON THE U.S.-CANADA FREE TRADE AGREEMENT

MARCH 25, 1988

I wish to thank you, Mr. Chairman, for giving me this opportunity to present my views before the Subcommittee.

Earlier this month, I and forty other members of the California House delegation wrote to Chairman Rostenkowski expressing our grave concerns about the Canadian Government's insistence that the U.S.-Canada Free Trade Agreement exclude "cultural industries," including the motion picture industry, from its coverage.

We emphasized in our letter that we support the broad objectives of this historic agreement. But we believe that, under the guise of protecting its "culture," Canada is putting up barriers in its marketplace, which, if duplicated in other countries, would injure the California movie industry -- an industry that provides this country with over $1 billion annually in net overseas earnings.

At the February 9 hearing before this Committee, I expressed my own concerns about the exclusion of "cultural industries" from the FTA. I want to amplify those concerns here.

On February 18, 1988, the Toronto Star carried a story that illustrates why this problem is of such immediate concern to us. The story is headlined "Film Law to go Ahead Despite U.S. Protests, Ottawa Declares." I would like to submit this article for the record.

If I may quote at some length, the story states: "Canada will not back down from its commitment to introduce its controversial film distribution policy in spite of continue American opposition to the plan, Communications Minister Flora MacDonald says." The story continues, "MacDonald said in an interview yesterday her 'commitment to bring forward a film distribution policy is firm,'" and that "she 'still intends to bring forward measures to ensure Canada operates as a separate distribution market and to support the role Canadian distributors must play in their own market.'"

What Minister MacDonald is now seeking is a form of licensing for films, television programs, and home videos which exists in no other major country in the world. This proposal would permit U.S. studios to distribute within Canada only films they produced or for which they otherwise hold worldwide distribution rights.

But in the film industry, U.S. distributors may also hold limited distribution rights, which they have obtained by license agreements with other film companies, for other films. The U.S. distributors of such "pick-up" films, as they are known in the industry, would be forced to relinquish to a Canadian distributor the right to distribute these films in Canada.

If Canada enacts Minister MacDonald's proposal, it would violate the spirit of the Agreement. The proposal would have the effect of barring at least 30 percent of U.S. films from Canada.

California has a great interest in resolving this problem. According to the California Film Commission, there are approximately 80,000 people employed in the motion picture industry within the State of California. One hundred ninety films were produced in whole or in part in California in 1987.

Safeguarding revenues derived from the Canadian market is vital to the U.S. film industry. The Motion Picture Association estimates that the U.S. film industry would suffer a loss of $50 million or more annually in the Canadian market if the Canadian government enacts this restriction. That loss of revenue could be magnified many times if Japan, France, Germany, Italy, the United Kingdom, and developing countries were to adopt similar proposals in their own markets.

Prime Minister Mulroney has stated that Canada's sole objective was "to make it possible for Canadians to make and see their own movies." But the fact is the licensing proposal would not create a single new Canadian movie, nor would it entice one more Canadian to buy a ticket to see a Canadian movie at a Canadian theater. What it would do is provide a protected market for Canadian film distributors. This is hardly a question of "cultural sovereignty."

I urge this Committee and the Administration to work together to develop language in the implementing legislation for this Agreement to resolve this situation. Mr. Chairman, I would be happy to work with you on a matter of such importance to the State of California.

Thank you.

THE TORONTO STAR, THURSDAY, FEBRUARY 18, 1988 ★

Film law to go ahead despite U.S. protests Ottawa declares

By Martin Cohn Toronto Star

OTTAWA — Canada will not back down from its commitment to introduce its controversial film distribution policy in spite of continued American opposition to the plan, Communications Minister Flora MacDonald says.

Responding to a strong assault from influential U.S. senators, MacDonald said in an interview yesterday her "commitment to bring forward a film distribution policy is firm."

MacDonald said she "still intends to bring forward measures to ensure Canada operates as a separate distribution market and to support the role Canadian distributors must play in their own market."

However, she did not specify when the government will follow through with its long-standing promise to introduce the proposed legislation.

New powers

U.S. senators have signalled their concern over the policy by seeking wider presidential powers to retaliate against any future restrictions on film distribution once the Canada-U.S. free trade agreement comes into effect.

Six U.S. senators have written to a House of Representatives' trade committee demanding any new implementation legislation for the free trade pact include new presidential powers to impose sanctions if Canada goes ahead with its long-delayed film bill.

Ottawa's proposal would restrict U.S. studios to distribution within Canadian borders only for films they produced or for which they held world rights. It has provoked stiff opposition from American industry lobbyists, and U.S. President Ronald Reagan has taken up their cause.

The film bill still has not been tabled in the House of Commons, prompting speculation that the government is awaiting final passage of the free trade pact by Congress. Under the deal, which would begin to take effect next Jan. 1, cultural industries are exempt but the U.S. is entitled to respond with measures of "equal commercial effect" if their business interests are affected.

The Feb. 5 letter, signed by Democrat senators Alan Cranston, Pete Wilson, Donald Reigle, Max Baucus and George Mitchell as well as Repubican senator John Heinz, was made public this week.

But they appear to be unaware of the extent of American domination of Canada's film distribution industry, MacDonald said yesterday through her press secretary, Patricia Dumas.

"The film distribution sector in Canada is characterized by a fundamental inequity, whereby it is difficult to obtain recognition and treatment of Canada as a separate national market for rights," MacDonald said.

STATEMENT OF THE HONORABLE JIM MOODY (D-WIS.)
ON THE UNITED STATES - CANADA FREE TRADE AGREEMENT
BEFORE THE COMMITTEE ON WAYS AND MEANS

FEBRUARY 9, 1988

Mr. Chairman, I welcome the opportunity these hearings present to look closely at the merits of the proposed U.S.-Canada free trade agreement. Over the coming months, Members of this Committee will have to evaluate this agreement and work with the Administration to craft critical implementing legislation.

I support the goals of the U.S.-Canada agreement -- namely, the removal of unfair barriers to trade between the United States and its largest trading partner. I will limit my remarks to two outstanding concerns that I hope can be resolved over the coming months: Canadian unfair trade practices in beer and the treatment of intellectual property issues.

While the proposed free trade agreement calls for a significant reduction of tariff and nontariff barriers in wine and distilled spirits, it does not apply these requirements to beer. The Canadian provinces have established a series of practices, such as discriminatory pricing and tightly controlled provincial licensing, that make it impossible for American producers to compete on an equal footing with Canadian brewers. There appears to be considerable demand for American brands in Canada and highly efficient companies are operating in the U.S. with significant excess capacity. Clearly, beer ought to be a prime candidate for inclusion in any free trade agreement. The Canadian government successfully insisted on its exclusion.

Both the U.S. and Canadian tariffs on beer will be eliminated under the free trade agreement's general tariff reduction schedule, but none of the nontariff barriers will be addressed. In effect, this removes the one American barrier to Canadian brands but leaves in place all the highly discriminatory practices ongoing in the Canadian provinces.

To exempt beer from an agreement of indefinite duration with our largest trading partner sends a very poor signal. Whether fairly or unfairly, it signals to Canada a lack of concern on the part of our government about the limited access given to American producers and the tremendous protection provided to Canadian brewers.

Ambassador Yeutter and other USTR officials have assured me that the United States will continue to protest Canadian unfair trading practices within the framework of the General Agreement on Tariffs and Trade (GATT). A real opportunity now exists to do exactly that. There is an ongoing GATT dispute between Canada and the European Community (EC) concerning Canadian distribution and pricing practices on wine, spirits, and beer. A GATT panel issued a preliminary ruling in favor of the EC last November. The resulting bilateral discussions between the two parties broke off last week, reportedly after the two parties failed to reach agreement on wine and beer. It now appears that the dispute will come directly before the the United States and the other GATT member countries for final determination.

I urge the Administration to pay close attention to this issue in the coming weeks. A ruling against Canada could lead to changes in its treatment of all imported beers -- including American brands. I welcome any information about efforts on the part of the United States to address Canadian unfair trading practices in the treatment of beer. Specifically, I would welcome assurances to this Committee that the exclusion of beer from the U.S.-Canada agreement is, in the view of this Administration, *not an implicit endorsement of Canadian unfair practices but an added incentive* to vigorously pursue remedies through other channels, such as the GATT.

My second set of concerns is in the area of intellectual property. Cultural industries -- specifically, the distribution of American movies, television programs and home video materials -- are not covered by the free trade agreement. While Canadian officials agreed to further discussions outside the Agreement, these talks have now stalled. No agreement has been reached that would prevent Canada from introducing new barriers to trade in this area. In fact, Canadian officials have indicated they seek to impose new licensing requirements on American products.

The United States should respect legitimate Canadian concerns over cultural sovereignty. At the same time, U.S. officials should make every effort to oppose new barriers that are erected for economic, rather than cultural, purposes. A Canadian licensing system would not restrict the flow of American films into Canada, it would merely ensure that Canada benefited from the import of these products. The erection of similar barriers in other countries -- already proposed by several -- could eventually affect some 38% of the U.S. film industry's total revenues.

Currently, Article 2005 (Cultural Industries) of the free trade agreement states that "a Party may take measures of equivalent commercial effect in response" to unfair trade practices in this area. Failing an adjustment in the agreement itself, Congress and the Administration should include language in the implementing legislation that would *strengthen the United States' authority to respond to Canadian actions* by allowing the President to consider both actual and potential damage to U.S. interests.

I hope that Secretary Baker, Ambassador Yeutter, and other witnesses will use the opportunity presented by these hearings to address these issues.

STATEMENT OF NATIONAL POTATO COUNCIL
ENGLEWOOD, COLORADO
LARRY YOUNG, PRESIDENT

The National Potato Council (NPC) is a trade association which represents 12,000 potato growers from across the nation in legislative and regulatory affairs.

While the U.S./Canadian Free Trade Area (FTA) was being negotiated, the NPC met with and presented a policy statement to our U.S. trade negotiators. The NPC pointed out that Canada maintains numerous direct and indirect subsidies, as well as various other non-tariff barriers involving fresh and processed potatoes, such as container restrictions and easements.

The agreement signed by both countries phases out tariffs over a ten-year period, but defers to the Multinational Trade Round Issues of subsidies and non-tariff barriers for potatoes as well as most other agricultural commodities. The mutual ten-year phase out of tariffs may actually increase Canadian access to the U.S. market due to the continued use of Canadian subsidies and non-tariff barriers. Thus, U.S. potato growers receive no immediate benefit from the FTA.

Under the FTA, Canada will be allowed to continue providing subsidies to its potato growers, such as freight, storage, and advance payments for storage crops, as well as maintain standard container laws and easements which operate as interprovincial non-tariff barriers. In addition, inspection for grade and standards, phytosanitary restrictions and chemical standards have not been harmonized.

U.S. negotiators argue that although potatoes and other agricultural commodities are not immediately benefited by the FTA, a framework for future free trade is established through further bilateral and multilateral discussions. For example, both the U.S. and Canada have agreed to address subsidy and non-tariff barrier reductions at the Uruguay Round. In addition, both have agreed to harmonize health, safety, packaging, labeling, and inspection standards. However, the potato industry does not have adequate assurances that those issues will be fully and quickly addressed at the Uruguay Round.

We urge that FTA-implementing legislation submitted to the Congress be more specific in certain areas. These would include assurances that the Canadians would not misuse the new snap-back tariff provision and that a mechanism can be established which would allow U.S. producers access to the snap-back provisions with minimum expense; specific timetables for the harmonization of technical issues; and specific authority for the negotiation of bilateral quotas such as when the Canadians proceed with the development of their national marketing agency for potatoes; and more explicit assurances as to how subsidy and non-tariff barriers will be addressed bilaterally and multilaterally.

STATEMENT OF GLENN R. SCHLEEDE, VICE PRESIDENT
NEW ENGLAND ELECTRIC SYSTEM

THE U.S.-CANADIAN FREE TRADE AGREEMENT AND ELECTRICITY IMPORTED FROM CANADA ARE IN THE NATIONAL INTEREST

- Coal industry concerns about electricity imports are based in part on incorrect information relating to Canadian imports -

A statement submitted for the record of the Subcommittee on
Trade, Committee on Ways and Means, U.S. House of
Representatives, in connection with hearings
held March 1 and 11, 1988

Mr. Chairman and Members of the Subcommittee:

My name is Glenn Schleede. I work for the New England Electric System (NEES) which serves customers in nearly 1.2 million homes, businesses and institutions in Massachusetts, Rhode Island and New Hampshire.

I want to start by thanking you for the opportunity to present information that will make two basic points:

. The U.S.-Canadian Free Trade agreement and electricity imports are in the U.S. national and public interest; and

. Part of the concerns expressed by representatives of the coal industry about electricity from Canada is based in significant part on incorrect information relating to those imports.

More specifically, I will explain:

1. The important role that coal already plays in supplying the energy used by NEES Companies in generating electricity.

2. The importance of diversifying the sources of energy used to generate electricity in New England, which has reduced and will continue to reduce dependence on foreign oil.

3. The role of imported electricity is displacing foreign oil -- NOT coal -- in New England.

4. The advantages to the New England region and the nation of the U.S.-Canadian Free Trade Agreement, particularly as it affects electricity and coal.

5. The disadvantages to U.S. residential and business consumers -- and the overall economy -- of protectionist measures which would interfere with low cost imported energy.

In addition, I will provide facts about the role -- or, more correctly, the lack of a role -- in pricing of imported electricity from Canada that is played by:

. Government subsidies to Canadian electricity producers; and

. Differing approaches in the U.S. and Canada to the reduction of sulfur dioxide emissions from powerplants and industrial facilities.

DETAILS

With that brief introduction, let me turn to the detailed information that supports the above summary points.

A. COAL PLAYS AN IMPORTANT ROLE IN SUPPLYING THE ENERGY USED BY NEW ENGLAND ELECTRIC SYSTEM (NEES) COMPANIES IN GENERATING ELECTRICITY.

Recognizing your interest in coal, I want to start by making clear that coal now plays an important role in supplying the energy used by the New England Electric System (NEES) Companies in generating electricity.

1. Six generating units have been converted from oil to coal, with coal now supplying 45% of the energy we use to generate electricity.

Back in 1979, foreign oil supplied 78% of the energy used by NEES Companies in generating electricity. Starting in 1974, an aggressive program was undertaken to obtain permission to convert 6 generating units from oil to coal. Conversion involved a lengthy process to obtain approvals by appropriate Federal, State and local government agencies and an expenditure of about $300 million.

The conversion program was completed in 1982 and has been an economic and environmental success. We now use about 3.3 million tons of coal each year and avoid the importation of about 12 million barrels of oil. During 1988, coal will supply about 45% of the energy we use to generate electricity.

2. A unique coal-fired, self-unloading collier carries coal to our generating stations.

   A NEES subsidiary is the majority owner of a unique coal-fired self-unloading collier that carries coal -- originating principally in West Virginia, Virginia and Pennsylvania -- from East Coast ports to our generating plants in New England. This ship, launched in 1983, makes a round trip each 4.5 days on average, completing about 80 voyages per year. Thus far, it has carried more than 12 million tons of coal.

3. Contracts have been signed with cogenerators that plan to use coal in fluidized bed boilers to generate electricity and steam.

   The New England region has experienced rapid increases in the demand for electricity and needs additional sources of supply. NEES Companies have been active in considering all alternatives for assuring an adequate and reliable supply of electricity at lowest cost for our customers. This includes new sources of supply and load management and conservation programs to hold down electricity demand.

   Potential sources of supply include independent power producers and cogenerators. NEES Companies now obtain electricity from such sources equivalent to about 250 megawatts of capacity and we have under contract sources equivalent to an additional 420 megawatts of capacity.

   Among the cogeneration facilities under contract are two planned cogeneration facilities that will use coal in fluidized bed units. In total, these two facilities would provide the New England region with 254 megawatts of generating capacity.

B. THE NEW ENGLAND REGION IS DIVERSIFYING ITS ENERGY SOURCES FOR ELECTRICITY AND HELPING TO REDUCE NATIONAL DEPENDENCE ON FOREIGN OIL.

The oil supply interruptions and rapid price increases of the 1970's demonstrated to many, including the electric utilities in the New England region, that excessive reliance on any one energy source was not the best way of providing a reliable and adequate supply of electricity at lowest possible cost. Accordingly, actions have been taken to diversify energy sources.

1. Oil supplied 72% of the energy to produce electricity for the New England region in 1972, but is expected to supply only 17% by 1993.

   The electric utilities making up the New England Power Pool (NEPOOL) have made great progress in diversifying the energy sources for the electricity needed for the New England region. Attachments 1 and 2 to this statement and the table below shows this progress.

NEPOOL ENERGY MIX - PERCENT BY SOURCE

				Estimated*	
Energy Source	1972	1979	1987	1993	2000
Hydro	7%	6%	5%	4%	4%
Hydro-Quebec	-	-	4%	10%	5%
Nuclear	13%	32%	28%	36%	31%
Coal	4%	3%	16%	16%	14%
Alternates**	-	-	-	6%	5%
Natural Gas	-	-	5%	7%	14%
Oil	72%	53%	32%	17%	26%
Purchases	3%	6%	10%	3%	1%
Total	100%	100%	100%	100%	100%
Gigawatt Hrs.	70,113	83,839	105,137	110,392	129,456

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* Based on contracts in place plus planned alternate energy and natural gas projects.

** Alternates for 1972, 1979 and 1987 are included in other categories.

As you can see from the above table, dependence on oil has been reduced substantially since 1972, with increased reliance principally on coal, nuclear energy and imports from Hydro-Quebec.

2. Diversifying energy supply sources has proven to be sensible policy in New England and elsewhere.

The progress made in the New England Region and elsewhere throughout the world has demonstrated that reliance on imported oil can be reduced and that diversification of energy sources reduces the potential impact of interruption of any one source.

In short, experience has demonstrated that diversification of energy supply sources is a sensible policy.

C. IMPORTED ELECTRICITY IN NEW ENGLAND DISPLACES OIL -- NOT COAL.

Concerns have been expressed by some people in the coal industry that electricity from Canada may be displacing coal. That concern is not supported by the facts in New England and appears not to be a serious problem in other areas of the U.S.

1. Lowest cost electric generation is brought into service ahead of higher cost sources.

First, it is important to recognize that 93 electric utilities operating in the New England region have organized themselves into the New England Power Pool (NEPOOL). Among its responsibilites, NEPOOL controls the dispatching of all electricity, regardless of who owns the generating capacity or has signed the contract for purchase of power from outside New England.

The governing principal in the dispatching of this electricity is that the lowest cost source of supply is dispatched first. Savings achieved by this system of "economic dispatch" are then shared among the participating utilities.

2. NEPOOL entered into agreements with Hydro-Quebec for substantial amounts of imported electricity at low cost.

In 1983, Hydro-Quebec and New England officials reached agreement on the first phase of an arrangement under which the neighboring power systems agreed to build transmission facilities that would enable NEPOOL to import 33 billion killowatt-hours of electrical energy from Hydro-Quebec over an 11-year period beginning in 1986. Phase I transmission facilities with capacity to transmit 690 megawatts of power went into service in 1986.

In 1985, the parties reached agreement on Phase II which provided for the construction of an expanded transmission interconnection with a total transfer capacity of 2000 megawatts. Purchases from Hydro-Quebec increase the energy diversity of New England's bulk power supplies and are expected to meet nearly 10% of NEPOOL's electrical requirements in 1991.

3. Under the NEPOOL economic dispatch system, electricity from Hydro-Quebec backs out oil-fired generation.

Electricity from Hydro Quebec takes its place among the potential sources of electricity available for dispatch. The price for most of the electricity available under NEPOOL's contract with Hydro-Quebec is based upon a percentage of the average cost of generating electricity with fossil fuels (oil, coal and natural gas) in New England.

Except for a short period of time during 1986, coal has been the lowest cost source of fossil-fueled generation, natural gas obtained on an interruptible basis, the next lowest and oil the highest.

Under the pricing arrangement for electricity from Hydro Quebec, that electricity is almost always cheaper than oil, and has displaced the highest cost fossil-fueled source which, except for the short period during 1986, has been oil -- NOT coal.

Attachment #3 to this statement illustrates NEPOOL's Load Duration Curve & Fuel Mix of Generation. This graph shows the mix of generation sources according to variable cost -- with domestic hydro being lowest, followed by nuclear, coal, imports from Hydro-Quebec, oil and, finally, peaking units (pumped storage and internal combustion generating units).

As you can see from this graph, it is oil and peaking units that are displaced by electricity from Hydro-Quebec. Coal-fired generation is not displaced as long as it remains less expensive than oil-fired generation.

D. CANADA IS AN IMPORTANT SOURCE OF LOW COST ENERGY THAT BENEFITS U.S. CONSUMERS AND THE U.S. ECONOMY, AND PROVIDES AN IMPORTANT MARKET FOR U.S. PRODUCTS, INCLUDING COAL.

Extensive and detailed information, which I shall not attempt to repeat, has already been made available to the Congress by the Executive Branch on the important benefits of energy trade between the U.S. and Canada. However, I will summarize five key points that appear important to your deliberations:

1. Canada is now the largest purchaser of U.S. coal.

First, during 1987, Canada imported nearly 16 million tons of coal from U.S. producers -- the largest amount imported by any one country -- at a price of about $650 million.

2. Canada is the largest foreign supplier of electricity, oil, natural gas and uranium.

Second, Canada is the largest supplier to the U.S. of:

. Low cost electricity produced by hydro-electric plants and by nuclear and coal-fired plants
. Natural gas
. Oil
. Uranium

3. Canada offers the most secure source of imported energy available to the U.S.

Third, great concern is expressed in national energy policy debates over the potential for excessive reliance by the U.S. on foreign energy sources. Often participants in those debates conveniently overlook the substantial differences among the various sources of imported energy.

In fact, there are wide differences in the relative security of the various forms and sources of energy. It is intellectually dishonest to lump together, for example, oil from the Persian Gulf and oil, natural gas or electricity from Canada. The sources of the Nation's imported energy differ widely in terms of:

. Distances,
. Ease of diverting supplies to another buyer,
. Transportation modes,
. Implications of capital investments, particularly in transportation (e.g., transmission lines and pipelines),
. Policies of the exporting country, and
. Relationships between the importing and exporting countries.

Hydro-Quebec, for example, is making a large investment -- approximately $1 billion -- in transmission facilities to bring electricity to New England. That investment will be a wise one only if those lines are used over a long period of time.

4. Exchanges of electricity among neighboring utilities provides important efficiency gains, helping to hold down cost.

Fourth, the interconnection of utility systems offers important efficiency gains, particularly when the systems have peak loads that occur at different times.

All electric systems must have extra capacity to help assure that electricity will be available in times of peak demand or when generating units or transmission lines are not available, for example, for planned maintenance or unexpected outages.

When neighboring systems are interconnected, they can share electricity, making it unnecessary for each system to have capacity to cover all contingencies. Such interconnections are an important way of avoiding unnecessary capital investments and thus help hold down the cost of electricity for consumers.

The advantages are particularly important when neighboring systems or power pools have different peak demand periods, which is often the case with neighboring systems in the U.S. and Canada. Canadian systems tend to experience their periods of highest demand during the winter. U.S. systems are more likely to experience peak demand during the summer.

5. Energy trade with Canada is an important source of revenue to permit Canadians to buy U.S. products.

As illustrated above, Canada is an important source of secure, low cost energy and contributes to efficiencies which help hold down costs to U.S. consumers.

I should also note that the revenue flowing to Canada helps make it possible for Canada to be the largest single market for the export of U.S. goods and services, thus contributing to a stronger economy and more jobs in the U.S.

E. THE U.S.-CANADA FREE TRADE AGREEMENT (FTA) HELPS ASSURE THAT CANADA WILL BE A SECURE SOURCE OF LOW COST ENERGY FOR THE U.S. AND A GOOD MARKET FOR U.S. PRODUCTS.

Executive Branch officials have also made available to the Congress extensive information -- which I will not attempt to duplicate -- on the advantages of the U.S.-Canada Free Trade Agreement in assuring that Canada will continue to be a secure source of low cost energy for the U.S. and a good market for U.S. products.

Instead, I will merely mention several of the provisions pointed out by Department of Energy Officials that have special importance in New England. These particularly important features of the Agreement are:

- Eliminate discriminatory pricing in energy trade, assuring that consumers in both countries are treated equitably;
- Prohibit restrictions on imports and exports, including quantitative limitations, import and export taxes and minimum export prices;
- Limit the circumstances under which one country may reduce import from or exports to the other, which will help assure continuing energy supplies to consumers; and
- Allow for free trade in uranium, including elimination of the Canadian requirement that uranium exports be upgraded in Canada, and the U.S. will continue its policy of not imposing restrictions on domestic enrichment of Canadian uranium.

F. PROTECTIONIST MEASURES APPLIED TO ENERGY IMPORTS WOULD HARM U.S. ECONOMIC INTERESTS.

During the past 3 years, your Committee has held a number of important hearings on potential protectionist measures that might be applied to certain sources of imported energy. I recognize that coal producers and miners, in particular, are frustrated when alternative sources of energy are available at lower cost. They are concerned with the loss of potential markets and jobs and would like protection against lower cost competitors.

The desire of domestic coal producers to limit competition is understandable. However, I believe it is also important that your Committee take into account:

- The obligation that electric utilities have to their customers, and
- That protectionist measures limiting access to low cost sources of energy would be detrimental to U.S. consumers and the U.S. economy.

1. Electric utilities have an obligation to provide an adequate and reliable supply of electricity at lowest possible cost.

As you know, electric utilities have an obligation to provide an adequate and reliable supply of electricity at the lowest possible cost. This is a special problem in the Northeast where electricity costs tend to run higher than the national average.

As pointed out earlier, NEES has converted 6 generating units to coal to diversify energy sources and provide electricity at lower cost than is possible with the use of oil.

We have also participated in NEPOOL arrangements to obtain electricity from Canada. Clearly, we would not be interested in importing electricity into New England if it were not a low cost source of supply.

2. Low cost electricity helps hold down consumers' energy costs, leaving them more money to spend on other goods and services.

Our actions to hold down electricity costs are providing important economic benefits within and outside the New England region. When we are able to hold down electricity costs, individual consumers have more money remaining that can be used to purchase other goods and services produced within New England and elsewhere, thus contributing to a stronger national economy and more jobs.

3. Low cost energy supplies help U.S. business hold down the cost of their products and services and compete in world markets.

As electric utilities hold down electricity costs, business and industrial customers are able to translate the savings into lower prices. Lower prices benefit their customers throughout the U.S. and make it easier for our business and industrial customers to compete in world markets.

4. A DOE Study demonstrates that limiting electricity imports from Canada would drive up consumer costs and increase U.S. dependence on imported oil.

A recent analysis by the Department of Energy's Energy Information Administration (EIA) serves to highlight the advantages of imported electricity from Canada. The EIA study analyzed the effects of the elimination of electricity imports from Canada. In brief, that analysis showed that elimination of electricity imports would:

- Increase U.S. coal consumption by about 1 million tons (2 million tons by the year 2000).
- Reduce exports of U.S. coal to Canada by 4 to 5 million tons.
- Increase oil imported into New England by more than 65%.
- Sharply increase electricity prices in New England.

5. Protectionist measures merely delay the time when actions must be taken to meet competition and make eventual adjustments more difficult.

U.S. coal producers and miners have done an excellent job, particularly during the past six years, in improving productivity and bringing down coal prices. Undoubtedly, these actions have helped keep U.S. coal competitive in many markets. Still, the challenge to maintain or improve competitiveness remains and more actions -- particularly in bringing down high transportation rates -- will be necessary.

While protectionist measures are often tempting, experience in the U.S. has often demonstrated that such measures drive up costs for U.S. consumers, selectively harm other sectors of the economy, and merely delay the time when adjustments are made because of the need to become more competitive. Furthermore, once adjustments become inevitable, experience has demonstrated that they are often more painful to individuals, organizations and regions than they would have been if adjustments had been made earlier to improve productivity and bring down costs and prices.

G. OPPONENTS OF ELECTRICITY IMPORTS FROM CANADA HAVE INCORRECTLY DESCRIBED THE ROLE OF SUBSIDIES IN PRICING ELECTRICITY FROM CANADA.

During the past year, certain opponents of imported electricity from Canada have attracted considerable attention. Those opponents have incorrectly described the role of subsidies in pricing electricity from Canada. Four points concerning the role of subsidies are particularly important:

1. First, electricity sold by most Canadian power producers is market priced, not cost based.

The assertions by opponents of imported electricity from Canada have ignored the fact that electricity sold by most Canadian power producers to U.S. utilities is market-priced rather than cost-based. The fact that this point is overlooked is understandable since most electricity sold in the U.S. is regulated and the price charged is based upon the cost of providing that electricity, commonly referred to as "cost of service" regulation.

Most Canadian electricity sales to U.S. utilities are market-priced. Prices for Canadian electricity are negotiated on an "arms length" basis between the Canadian utility and the U.S. utility purchaser. Those negotiations typically take into account the alternative sources of electricity available to the buyer.

2. Second, Canada's National Energy Board rules require that the export price be at least high enough to recover costs, including explicit and implicit subsidies.

Electricity exports to the U.S. must be approved by Canada's National Energy Board (NEB). The NEB has had three criteria that must be met before an export permit was granted:

a. The export price must recover the appropriate share of costs incurred in Canada. In a June 1987 decision, the NEB made clear that the export price must include all costs borne by Canada, including environmental, land use and economic costs associated with the imports. The NEB's June 1987 decision also made clear that the export price must include both implicit and explicit subsidies.

b. Canadian exporters must demonstrate that the price they are charging will not be less than the price they give Canadians for equivalent services in related areas. The NEB has insisted that electricity be offerred to neighboring Canadian provinces before an export license is approved.

c. Exporters were required to demonstrate that the price they were charging would not be less than the least cost alternative in the purchasing utility's franchise area.

This third test is eliminated by the terms of the U.S-Canada Free Trade Agreement, thus helping to assure that the imported electricity will be priced at market rates.

3. Third, subsidies provided to Canadian electric utilities are much like those provided to some energy producers in the U.S.

The third point that is often overlooked is that governments in the U.S. provide certain subsidies to some energy producers, including producers of electricity, that are much like those provided to Canadian producers of electricity.

a. Subsidies in Canada.

In Canada, subsidies include:

. Canadian electricity producers are generally provincially owned crown corporations and thus excluded from paying either Federal or provincial corporate income or sales taxes.

. Long-term debt of Canadian provincial utilities may be guaranteed by provincial governments, thus resulting in lower interest rates.

. Less responsibility to pay a return on equity investments from provincial governments.

In addition, some subsidies may be involved in the form of:

- Government appropriations.
- Government provided accident insurance for nuclear facilities.
- Water royalties at less than true economic cost.
- Relatively high debt to equity ratios, made practicable by the government backed debt.

b. Subsidies in the U.S. Similar subsidies are certainly not unknown in the U.S. Some electric utilities in the U.S. -- principally Co-ops and publicly owned utilities (e.g., municipals, state power authorities, TVA) -- enjoy such subsidies as:

- Freedom from Federal, state and/or local taxes.
- Subsidized loans, with rates well below market levels.
- Loan guarantees, resulting in below market rates.
- Preferential access to low-cost power from hydro-electric projects constructed with Federal tax dollars.
- Forgiveness of prepayment penalties for loans (granted by the U.S. Congress in late 1987, at a cost to the U.S. Treasury estimated to be in the billions).
- Access to financial markets through the Federal Financing Bank, and resulting in below market interest rates.
- Access to tax-free industrial development bonds.
- Low cost or no cost access to water.

Electric utilities and other energy producers subject to Federal corporate taxes have, until the Tax Reform Act of 1986, enjoyed tax benefits in the form of investment tax credits. Rapid amortization of investments for tax purposes are still available though the amortization period was lengthed by the 1986 Tax Act.

In addition, the coal industry has benefitted somewhat from such subsidies as:

- Federally funded research, development and demonstration, and
- Forgiveness of substantial interest charges on funds borrowed from the U.S. Treasury by the Black Lung Trust Fund.

The U.S.-Canada Free Trade Agreement does not at this time eliminate subsidies on either side of the border.

4. Electricity from Canada can compete successfully with electricity produced in the U.S. because Canada has substantial capability to produce low-cost electricity, particularly from hydro sources.

The underlying factor that is often ignored by opponents of imported electricity from Canada is that Canada has substantial capability to produce low cost electricity because of an important natural resource in the form of massive hydro power.

This natural resource can be turned into hydro-electricity and transmitted to the U.S. at lower cost than electricity can be produced from fossil fuels in large parts of the U.S.

H. CANADIAN ENVIRONMENTAL REQUIREMENTS ARE DIFFERENT FROM, BUT NOT NECESSARILY LESS STRINGENT THAN, U.S. REQUIREMENTS.

Another argument made by opponents of electricity imported from Canada is that Canada has less stringent environmental requirements than the U.S., thus giving Canadian electricity an unfair cost advantage.

The facts about environmental requirements certainly deserve attention. In summary, as explained below, Canadian environmental requirements are different from, but not necessarily less stringent than, U. S. requirements.

1. Sulfur dioxide requirements. The principal focus of opponents to imported electricity appears to be on sulfur dioxide, since Canadian citizens and the Canadian government have been very critical of such emissions from U.S. powerplants and have claimed that they contribute substantially to "acid rain" falling in Canada.

A comparison of the sulfur dioxide situation in the U.S. and Canada reveals the following:

a. Provincial governments have the primary authority to set ambient air quality standards and impose emisssion controls to achieve them. The Canadian federal government has more limited authority than the U.S. federal government.

b. By mid-1987, five provinces (Ontario, Quebec, New Brunswick, Alberta and Saskatchewan) had adopted enforceable ambient sulfur dioxide (and nitrogen oxides) standards that are different from, but not necessarily less stringent than, U.S. ambient standards.

c. The Canadian federal government has negotiated an acid rain control program with the seven Eastern Canada provinces which are the principal sources of sulfur emissions (Ontario, Quebec, Manitoba, New Brunswick, Nova Scotia, Newfoundland and Prince Edward Island) which would reduce sulfur emissions by 35% from 1980 actual emission levels by 1994; i.e., from a total of 3.8 million tons to 2.5 million tons.

d. The province of Ontario which was the largest contributor of sulfur dioxide emissions in 1980 (1,773 thousand tons) has agreed to reduce emissions by 60% (to 885 thousand tons) by 1994.

e. The province of Quebec which was the second largest contributor of sulfur dioxide emissions in 1980 (1,098 thousand tons) has agreed to reduce emissions by 45% (to 600 thousand tons) by 1994.

f. The agreed upon provincial emission limits are in terms of total tonnage reductions, allowing provinces to come up with the most cost effective way of achieving that target.

2. Environmental implications of Canadian hydro-electric facilities are thoroughly reviewed.

In Canada, jurisdiction over environmental impact of hydro generation is vested in Provincial governments. Quebec, Manitoba and British Columbia each have differing procedures for the review of new generating projects.

According to information published by the National Energy Board, all three require environmental impact assessments. In Quebec, the provincial cabinet has final authority to approve a project. The Ministry of Environment provides an Environmental Impact Statement at least 45 days prior to the Cabinet decision. During that time, any citizen may request a public hearing on the project, the results of which are considered by the Cabinet in its decision. In Northern Quebec, approval of projects is based on agreements negotiated with Indian and Inuit groups, represented by the Federal Department of Indian and Northern Affairs.

Furthermore, electricity cannot be exported from Canada without an export license from the National Energy Board (NEB). The NEB's formal review procedure includes public hearings and an opportunity for intervention by all interested parties. NEB must find that the price is "just and reasonable" in order to grant an export license. The NEB broadly interprets this criterion to require that all costs are to be recovered. The NEB's review includes environmental and social impacts, and other aspects of full social costs.

3. A fair assessment of Canadian environmental requirements is warranted.

Those who criticize Canadian environmental requirements should keep two important points in mind:

a. Environmental requirements in Canada are different from requirements imposed in the U.S. However, Canada differs substantially from the U.S. in terms of industrial structure, geography, division of powers among levels of government and many other ways. It is unfair to pick out one part of U.S. environmental regulation in isolation and seek an identical requirement in the Canadian system to determine relative stringency of the requirements.

b. Looking for a Canadian counterpart for the U.S. New Source Performance Standards (NSPS) -- which, in effect, require installation of scrubbers -- is unrealistic. It must be kept in mind that adoption of a scrubber requirement in the U.S. was in part designed to protect markets for high sulfur coal. In many cases, scrubbers are not the most cost effective means of achieving emission reductions or ambient air quality standards. It appears that the Canadians have adopted a more cost effective approach.

I. CONCLUDING COMMENTS.

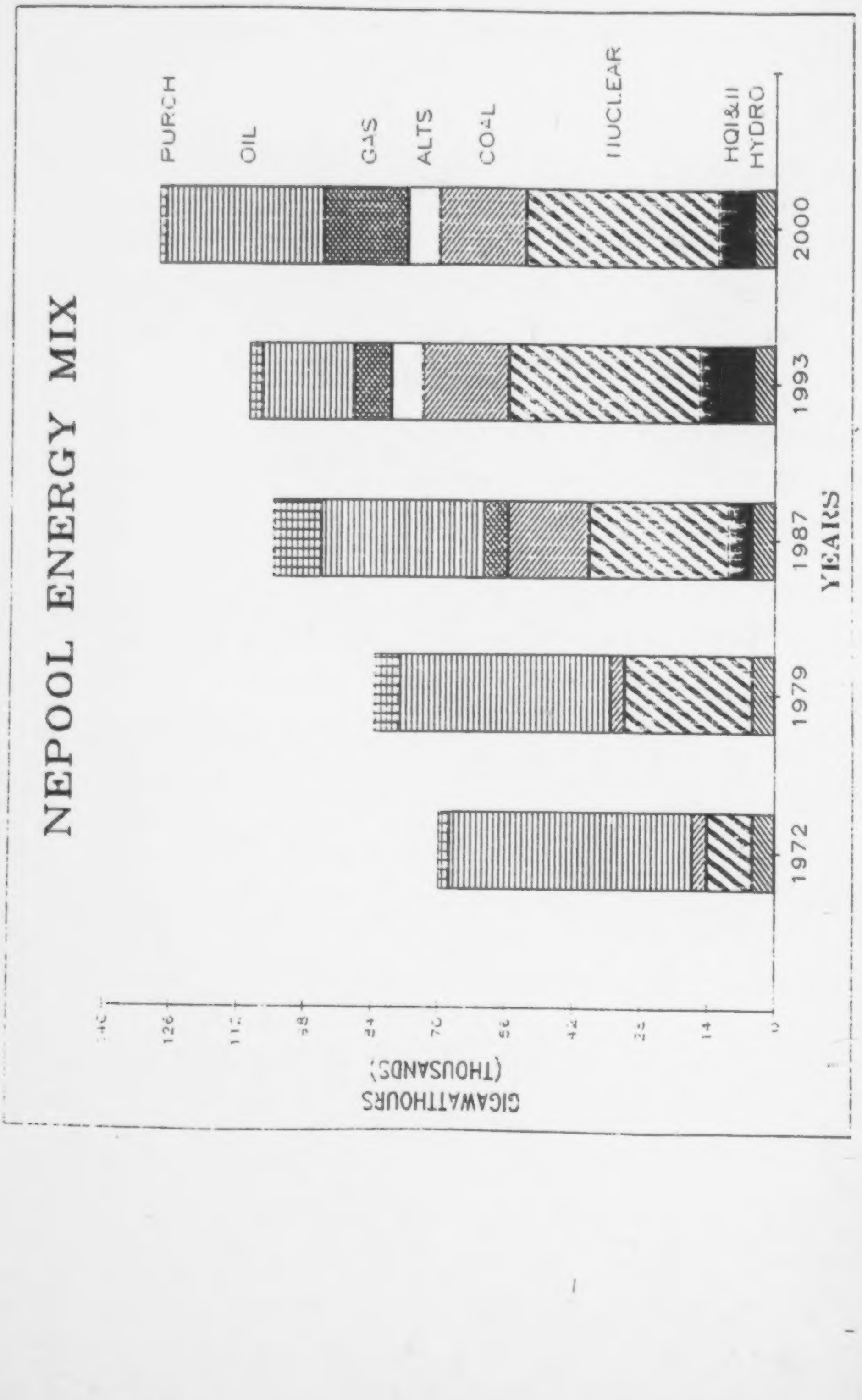
In brief summary:

. Imported energy from Canada provides secure, low cost energy sources that make an important contribution to the economic strength and energy security of the U.S.

. Canada provides an important market for U.S. products and services, including a market for some 16 million tons of coal.

. The U.S.-Canada Free Trade Agreement provides added assurances of free and fair trade, benefitting the citizens of both countries.

ATTACHMENT #1



ATTACHMENT #2

NEW ENGLAND POWER POOL (NEPOOL) ENERGY MIX
- In Gigawatt Hours -

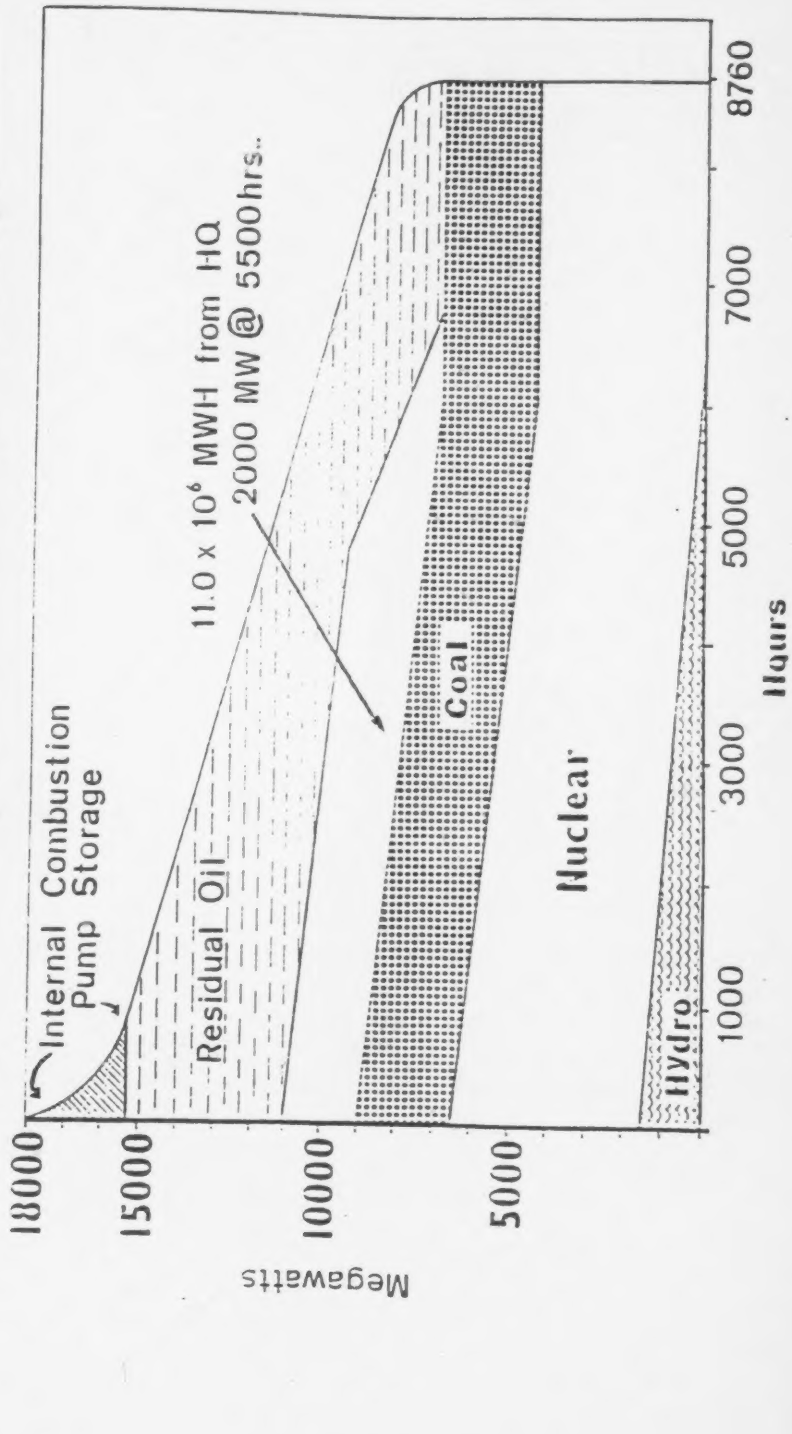
	Actual			Projected	
Energy source	1972	1979	1987	1993	2000
Hydro	4,802	4,748	4,940	4,716	4,702
Hydro Quebec	0	0	4,773	11,000	7,000
Nuclear	9,383	26,732	29,321	40,133	40,585
Coal	3,053	2,804	15,868	17,794	18,048
Alternates	(a)	(a)	(a)	6,735	6,734
Natural Gas	0	0	4,988	7,815	17,665
Oil	5,0651	44,208	34,062	19,216	33,026
Purchases	2,224	5,347	10,185	2,983	1,696
Total(b)	70,113	83,389	105,137	110,392	129,456

(a) Alternates is included under other categories in the 1972, 1979 and 1987 columns.

(b) Totals include pumped storage losses.

ATTACHMENT #3

NEPOOL - 1991 Load Duration Curve & Fuel Mix of Generation



STATEMENT OF THE NEW ENGLAND FUEL INSTITUTE AND THE INDEPENDENT FUEL TERMINAL OPERATORS ASSOCIATION

The New England Fuel Institute ("NEFI") and the Independent Fuel Terminal Operators Association ("IFTOA") hereby submit this statement to the Subcommittee on Trade of the House Committee on Ways and Means concerning the energy provisions of the U.S.-Canada Free Trade Agreement. NEFI is an association of more than 1,300 independent fuel oil marketers throughout New England. These firms own no crude oil production, refineries or pipelines. Many are small and family run enterprises. Together, they deliver more than 86 percent of the No. 2 home heating oil delivered in New England at the retail level and 85 percent at the wholesale level. IFTOA is an association of 19 companies which own and control petroleum product terminals from Maine to Florida capable of receiving ocean-going tankers. None is affiliated with a major integrated oil company. Members of the Association are also independent marketers of No. 2 fuel oil, No. 6 fuel oil, gasoline and other petroleum products.

I. Introduction

NEFI and IFTOA (collectively the "independent marketers") generally support the principles of free trade and the concepts embodied in the U.S.-Canada Free Trade Agreement ("FTA"). However, this Agreement was negotiated under extreme time pressures and, in certain respects, without regard to the implications of some of its provisions on American companies and consumers. As marketers we are specifically concerned about the effects of the provision that would exempt Canada from any future U.S. oil import fee.

Although an oil import fee is opposed by this Administration and by many members of Congress, many others, including several presidential candidates, have proposed and endorsed the concept. In addition, the Department of Commerce is currently considering, pursuant to Section 232 of the Trade Expansion Act, whether an import fee or other restriction on petroleum imports is necessary to eliminate any threat to U.S. national security. Therefore, despite NEFI and IFTOA's strong opposition to an oil import fee, realism requires a recognition that an oil import fee at some point in the future is a possibility. Our concern is heightened by the permanent duration of the FTA.

II. The Agreement Recognizes the Likelihood of Distortions

The concern of independent marketers stems specifically from Section 907 of the FTA, which prohibits either party from maintaining or implementing a measure restricting imports of energy from the other party. As a result of this provision, if the U.S. imposes an oil import fee at any time in the future, for budgetary, trade or security purposes, Canada must be exempted. In such circumstances, Canadian exporters of petroleum products would enjoy a major competitive advantage over U.S. firms, and could flood portions of the U.S. market with products exempt from the import fee. This action could significantly injure U.S. marketers and permanently impair the competitive viability of the independent petroleum marketing sector.

The FTA recognizes that distortions may be caused by the imposition of an import fee. Section 902.4 of the FTA specifically provides that either party may initiate consultations "with a view to avoiding undue interference with or distortions of pricing, marketing, and distribution arrangements." However, the Agreement provides for no time table for resolving such interference and/or distortions through the consultation process. Moreover, consultations may not be initiated until _after_ "either party imposes a restriction on import of an energy _good_". Accordingly, unless these procedures are expedited, distortions and interference will be created and could permanently impair competition in U.S. markets before any remedy is agreed to.

III. Distortions Are Likely To Occur

The likelihood of significant distortions is not remote. Both the level of any possible import fee and the current and potentially available Canadian refining capacity make possible a massive interference in Northeast energy markets.

First, oil import fees have been proposed of $5 and $10 per barrel. Even at the lower of these levels, an exempt Canadian refiner/supplier would enjoy a 12¢ per gallon competitive advantage over all other suppliers to the Northeast. Clearly, this advantage would exist over all importers of non-Canadian products. But the advantage would also exist over domestic suppliers because the import fee would increase the price of domestic crude oil by approximately the level of the fee. Therefore, costs of domestic refiners would increase to approximately the marginal cost of U.S. crude oil imports.

A wholesale price advantage of 12¢ per gallon is enormous in the competitive marketplace. Wholesale suppliers regularly operate on margins of 2 to 3¢ per gallon or less. A cost advantage of 12¢ per gallon would give Canadian suppliers the option of undercutting all other independent suppliers by a substantial amount and thereby taking market share from those suppliers, or increasing its price to the level of the suppliers affected by the import fee and reaping huge profits. More likely, a Canadian supplier would use a combination of both strategies, that is, it would substantially undercut other suppliers to the U.S. market but at the same time significantly increase its profits. This strategy would be very simple to accomplish if an import fee were imposed in the U.S. and there were no restrictions on Canadian imports.

Second, there is sufficient surplus and mothballed eastern Canadian refining capacity to permit Canadian suppliers to wreak havoc on the Northeast market. In the period January through September 1987 approximately 337,000 barrels per day of capacity in eastern Canada was not in operation. In addition, since 1981 approximately 472,000 barrels per day of refining capacity has been shut down. Without suggesting that all of this capacity could be rehabilitated, these levels demonstrate that substantial increased volumes of Canadian products could be imported into the U.S. Northeast if significant price distortions exist.1/

IV. Recommendation: A Clarifying Statement or Understanding

Independent marketers believe that the mechanisms established in the FTA must be clarified and strengthened to avoid a result that would injure the domestic markets of both the U.S. and Canada.

IFTOA and NEFI support a clarifying statement of legislative intent or an understanding between the U.S. and Canada that defines more specifically what the consultative process included in Section 902.4 is designed to achieve if an import restriction is imposed, and how quickly a solution must be fashioned.

The consultations should be directed toward a goal of protecting competition, and with a specific time frame so that agreement is reached promptly and distortions are avoided. The goal should be to avoid any significant changes in distribution patterns that result solely from U.S. imposition of an oil import fee.

One mechanism that can avoid such distortions is a quantitative restriction on the volume of petroleum products and natural gas that can enter the U.S. on a fee free basis. Another effective mechanism is an export tax imposed by Canada, which would serve to counter the effect of the exemption from the oil import fee.

IFTOA and NEFI specifically recommend that a legislative clarification specify a period of 60 days after initiation of consultations for the parties to agree on a mutually acceptable mechanism designed to avoid competitive distortions. If the parties do not reach agreement within 60 days, a mechanism to protect competition would be established by binding arbitration, within 30 days, pursuant to Article 1806 of the FTA. Additionally, this clarification should state that consultations would begin, following a request by either party, as soon as either

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1/ In January - September 1987, the total level of product imports from all of Canada was only 121,000 barrels per day.

party considered the imposition of a restriction on imports as likely.[2] Thus, consultations would begin before the imposition of the import fee.

This clarification would direct the consultations toward a prompt and effective remedy that would avoid distortions in either country's energy markets. However, this change would not limit the flexibility of U.S. or Canadian officials participating in the consultations to arrive at an appropriate and workable remedy, that properly reflects conditions at the time.

III. Conclusion

NEFI and IFTOA are seriously concerned about the effects on Northeast U.S. energy markets resulting from the exemption of Canada from any future oil import fee. The problem is hypothetical, but not remote. It was recognized by the negotiators of the FTA, who established a consultation mechanism to avoid distortions. However, this mechanism is inadequate. The problem can be resolved within the framework of the already negotiated FTA by inclusion of a simple legislative clarification that will guarantee a timely and effective result to these consultations, which are designed to avoid distortions created by imposition of a U.S. oil import fee. The clarification would require these consultations to establish a mechanism to avoid distortions within 60 days. This clarification will help a great deal to avoid distortions in the energy markets of both the U.S. and Canada.

2/ Recommend legislative language implementing the clarification is included as Attachment A.

Attachment A

LEGISLATIVE LANGUAGE PROPOSED FOR FREE TRADE AGREEMENT

Section 232 of the Trade Expansion Act, 19 U.S.C. §1862 is hereby amended by adding the following new subsection (f):

(f) If a fee is imposed on imported oil, pursuant to this section or otherwise, Canada shall be exempt subject to the provisions of Article 907 of the Canada-United States Free Trade Agreement. However, the United States, within seven days of such action, shall request consultations under Article 902.4 of such Agreement to avoid distortions in pricing, marketing and distribution arrangements. Those consultations shall be conducted expeditiously, with a view to establishing a mutually acceptable mechanism designed to avoid distortions, within 60 days. If no mechanism is agreed to within 60 days, the matter shall be referred to arbitration, pursuant to Article 1806 of such Agreement. Such arbitration shall establish a mechanism designed to avoid distortions, and protect and enhance competition, within 30 days.

Statement of Robert A. Hiney
Executive Vice President
Marketing and Development
New York Power Authority

My name is Robert Hiney, and I am Executive Vice President, Marketing and Development of the New York Power Authority. In that capacity, I am responsible for the planning of future power supplies for the Power Authority. This includes negotiating power contracts with other utilities, both domestic and Canadian.

I appreciate the opportunity to present testimony on behalf of the Power Authority on a matter which we consider most important to electricity consumers throughout New York State and the rest of the country.

The New York Power Authority is the largest non-federal public power agency in the United States. We provide about one-third of New York State's electricity.

Our mandate, both statutory and market driven, is to provide the cheapest possible power to our customers in the State of New York and in neighboring states. Those customers include basic industries, governmental agencies such as the City of New York and its subway system, municipal and cooperative electric systems and investor-owned electric utilities throughout the State which purchase Power Authority electricity for the benefit of their customers.

The Power Authority owns two major hydroelectric generating projects, two nuclear power plants, a pumped-storage hydro project, a gas-and-oil-fired plant and five small hydro projects. Our projects generated approximately 35.8 billion kilowatt hours of electrical energy in 1987. In addition, the Power Authority owns an extensive high voltage transmission network, including approximately 1400 circuit miles of transmission lines. In 1987, we purchased 8.4 billion kilowatt hours of electricity from Canadian utilities pursuant to a series of contractual agreements which I will describe briefly in a few minutes.

The Power Authority has no monopoly franchise area; we are a fully competitive utility. We are therefore particularly concerned about the cost of electricity which we generate and purchase since we have to undersell our competition wherever we provide power. In addition, we have a particularly strong incentive from our legislature and our customers to do everything possible to provide low cost power. Some areas of New York State have electricity rates which are among the highest in the nation, and businesses seeking lower costs will look elsewhere, including overseas, if steps are not taken to reduce energy costs.

By virtue of the location of our two major hydroelectric generating projects, the Power Authority has a long-standing relationship with Canadian utilities. At Niagara Falls, we share the waters of the Niagara River, pursuant to international treaty; at our St. Lawrence-FDR Project, the international border passes through the center of the power dam. Since the early 1960's, the Power Authority and Ontario Hydro have coordinated the operation of the two systems, for interchange of power at the Niagara and St. Lawrence-FDR interconnections, as well as for the use of generating equipment of either system by the other in order to make optimum use of all available water at all times.

In 1974, relationships with our Canadian partners began to broaden. In that year, we concluded a contract with Hydro-Quebec under which it agreed to make available 800 megawatts of firm "diversity" power and associated energy to the Power Authority during the warm weather months of April through October. It is at this time that New York's system needs additional power due to higher peak loads and surplus capacity is available to the Canadians, since their greatest demand is in winter. As part of this contract, we constructed a high capacity transmission interconnection between the Quebec border and Central New York which was completed in 1978.

We have purchased surplus energy from Ontario Hydro since the mid-1960s, and in 1978 began buying substantial quantities of non-firm energy from Hydro-Quebec. These purchases provide us with electricity on an "as available" basis which we obtain only when it is cheaper than that available from existing sources in New York State.

Finally, we have most recently signed a memorandum of agreement with Hydro-Quebec for the provision of firm power -- 1,000 megawatts -- which is our first year-round firm capacity purchase contract. This contract will replace current surplus energy purchases with firm capacity and energy which can be counted upon for capacity needs. Since 1978, New York State industrial, commercial and residential consumers have saved more than $600 million as a result of Power Authority purchases of Hydro-Quebec power and energy alone. Additional savings have been realized from purchases of power from Ontario-Hydro. At the same time, it should be recognized that Canadian power represents only a small fraction of New York's electrical energy needs. In 1987, 11 percent of our State's electric energy came from Canada; most of this was non-firm, surplus energy which reduced our costs but was not required to meet capacity needs within the State.

The focus of today's hearing is the potential effect of the Free Trade Agreement (FTA) on the consumers and industries of the United States. As it relates to the subject of electric energy, and particularly to the New York Power Authority and its mission and activities, my answer is that the impact of the agreement will be positive, and we support its implementation. Let me outline my reasons for that conclusion.

At the outset, let me point out that the Free Trade Agreement, as we understand it (in the absence of detailed implementing statutory language) does not materially change the status quo regarding electricity trade. Trade in electricity between the United States and Canada has historically been unencumbered by artificial barriers; instead, it has focused on the most economic dispatch of available sources of electricity generation.

The Canadian power sellers and the American buyers have to date operated on a purely market driven basis, and the FTA not only ensures that these market considerations will prevail, it provides additional protections.

A comparison of the current status to prospective conditions under the FTA suggests that under the new agreement there would be substantial protections for purchases of Canadian electricity as to price, regulatory actions, taxes, and other potentially discriminatory treatment.

The FTA will provide:

1) Explicit recognition that prohibits quantitative restriction, minimum export pricing and minimum import pricing. FTA Article 902(2). Canada will thus waive the current "least cost alternative" minimum pricing mechanism;

2) Both parties to waive any export taxes, duties or charges, unless the same tax, duty or charge is levied on energy goods destined for domestic consumption. FTA Article 903;

3) The parties to agree to specific limits on any export restrictions, even if such restrictions are GATT justified. FTA Article 904; and

4) The parties agree to consultations at the request of either party if an "energy regulatory action" (including NEB and ERA decisions) would directly result in discrimination against its energy goods or persons inconsistent with the principles of this Agreement." FTA Article 905.

The large-scale hydropower currently being developed in Canada enjoys a significant cost advantage over other large-scale generating options. This advantage is the essence of the cost disparity between power generated by U.S. domestic utilities and that which is generated in Canada. This is true with or without the Free Trade Agreement.

It makes good sense from an environmental standpoint to maximize use of those existing hydro resources which can be economically developed, wherever located, before turning to combustion of fossil fuels. Further, the use of this renewable resource helps conserve the world's non-renewable energy reserves. For example, purchases of Canadian hydropower for the Northeast will principally displace imported oil and natural gas-fired generation. In New York State about half of the generating capacity is oil-dependent. In 1986, even with a helpful assist from Canadian energy, the state had to rely on oil and natural gas for 38 percent of its electricity production.

In fact, the General Accounting Office (GAO), studying the issue of Canadian electricity imports in 1987 found that:

> To the extent that the proposals would result in reduced Canadian electricity imports, U.S. utilities may start using more imported oil. This would add to current security concerns over the level of U.S. reliance on imported oil and could increase the price of electricity to consumers, primarily in Northeastern states which rely to a large degree on oil-fired generation plants.[1]

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[1] U.S. General Accounting Office, Canadian Power Imports: Issues Related to Competitiveness, (Washington, D.C.: U.S. GAO, October 1987).

We believe that to the extent that the security of imports of Canadian power is enhanced by the FTA, it is a positive development for American industry and consumers.

I do not wish to leave the impression that this is only a Northeastern issue. Canadian electricity reaches the Midwest, the North Central U.S., the Pacific Northwest, and the Far West.

As I have noted, however, Canadian electricity is especially important in the Northeast in reducing oil dependence and lowering some of the nation's highest electricity bills. Quebec, Ontario and New Brunswick supplied nearly 28 billion kilowatt hours of lower-cost electricity to this region in 1987 -- equivalent to more than 46.5 million barrels of imported oil.

This region is important in providing services and in manufacture of machinery, electrical equipment, instruments, transportation equipment, fabricated metal and paper, as well as in printing and publishing.

Much as been said in recent months concerning the importance of enhancing the competitiveness of American industry. The free exchange of electricity, negotiated to the satisfaction of the trading partners, plays an important role in enhancing competitiveness through more efficient allocation of resources.

The price of energy in general, and electricity in particular, is of key importance in the competitive pricing of U.S. products. It must be considered along with the cost of capital, labor and natural resources. The cost of electricity is especially crucial since it is increasingly becoming the energy source of choice in powering our industrial and commercial sectors. Our competitive posture is strengthened when we are able to reduce these costs per unit of output through increased efficiencies.

Finally, let me add that while we desire to keep the Canadian option, we also encourage fuel diversity and do not wish to become overly dependent on Canadian energy sources. When our new 1000 megawatt firm power contract goes into effect, New York will be purchasing only 1,800 megawatts of its annual capacity needs from Canadian sources, which only amounts to 5 percent of the State's projected capacity resources in 1996. In that year New York's capacity mix will include about 4800 megawatts of coal fired generating capacity.

NEW YORK STATE BAR ASSOCIATION
INTERNATIONAL LAW AND PRACTICE SECTION

REPORT

RESOLUTION OF TRADE DISPUTES UNDER THE CANADA/UNITED STATES FREE TRADE AGREEMENT

On January 2, 1988 the President of the United States and the Prime Minister of Canada signed the Canada/United States Free Trade Agreement (the "FTA"), which provides for the elimination of all tariffs over a 10-year period, elimination of numerous non-tariff trade barriers, liberalization of conditions for investment between Canada and the United States and arrangements for the joint administration of the FTA and the resolution of disputes.

The International Law and Practice Section of the New York State Bar Association welcomes the FTA as an innovative and forward-looking trade agreement. However, the new mechanisms proposed for resolution of trade disputes present certain issues of concern to New York lawyers.

I.

New Mechanisms Proposed For Trade Dispute Resolution

Antidumping laws provide a remedy when a product is sold in the United States at a price less than its fair value and imports of that product are causing material injury to a domestic industry. Countervailing duty laws provide redress when an imported product is subsidized and the imports are causing material injury to a domestic industry. The FTA does not impose new disciplines on Canada or the United States with regard to their subsidies programs. Rather, over the next seven years, the Parties will work toward a new regime to redress unfair pricing and government subsidies.

Until a new substantive regime is adopted, the FTA provides that antidumping and countervailing duty cases involving United States and Canadian parties would continue to be governed by each nation's existing legislation. However, judicial review of final determinations of such cases by U.S. and Canadian domestic courts would be replaced with review by a binational panel comprised of two appointees of each government and a fifth member selected by agreement of the governments or by the other four panel members. The panel members would be selected from a roster of 50 candidates (to be appointed). Each government would name 25 persons to the roster, and all nominees would be citizens of the U.S. or Canada. A majority of the five members of each panel would be lawyers.

The jurisdiction of these essentially arbitral panels could be invoked with respect to antidumping and countervailing duty cases by either Canada or the United States or by either government at the request of a private party. This jurisdiction, if invoked, would extend to any final antidumping or countervailing duty determination of a competent investigating authority in either Canada or the United States. A panel review would determine whether the final determination in issue was made in accordance with the antidumping or countervailing duty laws of the importing country. The panels would apply the same standard of review as would be applied by a court of the importing country. In the United States, the review would apply to determinations by the Commerce Department or the

International Trade Commission ("ITC"), replacing review otherwise available in the U.S. Court of International Trade.

Private persons who would otherwise be entitled under the laws of the importing country to initiate judicial review of a final determination would be entitled to require their government to request a review. The agency or entity that issued the final determination subject to review by the panel would have the right to appear and be represented by counsel before the panel, as would any other persons who otherwise would have had standing to appear and be represented by counsel in a judicial proceeding under the laws of the importing country.

There generally would be no appeal from the decision of a panel. However, either government could seek relief from a further binational body (an "extraordinary challenge committee" composed of three designated judges or former judges of U.S. and Canadian courts, chosen from a roster of ten by the two governments) on the basis of allegations that (i) a member of the panel was guilty of gross misconduct, bias, serious conflict of interest or a similar offense; (ii) the panel seriously departed from a fundamental rule of procedure; or (iii) the panel manifestly exceeded its powers, authority or jurisdiction granted it under the FTA, and also that the alleged violation materially affected the panel's decision and undermined the integrity of the binational review process.

In addition, there would be binational review of any amendments to the two nations' antidumping and countervailing duty statutes. The FTA reserves the right of both countries to continue the application of their antidumping and countervailing duty laws to goods imported from the other country. Either government may change or modify its antidumping or countervailing duty laws, provided that the amendment specifies its application to the other Party and that notice is given and consultation is available at the request of the non-amending Party. Such amendments and modifications also must be consistent with the General Agreement on Tariffs and Trade ("GATT") and related agreements relating to antidumping and subsidies, and with the object and purpose of the FTA. At the request of either country, a binational panel may be appointed to issue a declaratory opinion as to whether a statutory amendment is inconsistent with the foregoing or has the effect of reversing a prior determination by a binational panel. If either government does not abide by the declaratory opinion, and if no other compromise is reached, the other government may take "comparable" amending action or terminate the FTA.

II.

Existing Trade Laws in Canada and the United States

The United States and Canada are both signatories to the unfair competition codes[1/] promulgated at the Tokyo Round, and the two countries' domestic antidumping and countervailing duty laws which implement those codes are generally harmonious. For instance, in both countries there is bifurcated administrative responsibility.

[1/] Agreement On Implementation Of Article VI Of The General Agreement On Tariffs And Trade (Relating To Antidumping Measures; Agreement On Interpretation And Application Of Articles VI, XVI and XXIII Of The General Agreement On Tariffs And Trade.

In the United States, the Department of Commerce is the "administering agency," responsible for determining whether or not there has been a subsidy or whether goods are being dumped, while the ITC must determine whether there has been material injury suffered by the domestic industry. In Canada, Revenue Canada makes the substantive determinations, while injury determinations are made by the Canadian Import Tribunal.

Unlike the U.S. law, the Canadian law provides for a public interest adjustment of the assessment of countervailing duties, with the possibility of a full exemption. Under Canadian law, the Minister of Finance has the authority to make an independent determination whether or not to impose countervailing duties in the amounts determined by the Import Tribunal or in another amount.[2/]

Aggrieved parties who have participated in the administrative deliberations have standing to pursue judicial review before the Canadian courts. Canadian antidumping rulings typically affect but a small portion of U.S. companies' production, however, so appeals have been rare; and there has been only one countervailing duty action involving U.S. exports to Canada. It also appears that Canadian judicial review of administrative determinations under that nation's antidumping and countervailing duty laws has been marked by far fewer instances of judicial remands to the administrative bodies for further administrative action than has been the United States experience.

While the two countries' laws are substantially identical,[3/] there is a variance in practice relating to the standard by which domestic subsidy programs may be found to be unfair. Under United States law, a prerequisite for a finding of an unfair domestic subsidy is that the benefits of the government program in question be available only to a specific region or industry, i.e., on a preferential basis. This "specificity test" was enunciated initially by the Commerce Department in its investigation culminating in the determination under review in the Carlisle Tire and Rubber Co. v. United States decision.[4/] Thus, benefits from a domestic program which are generally available to all will not be countervailable. This standard was later reformulated in the Commerce Department's 1983 decision on Carbon Black From Mexico.[5/] The appropriate standard is not whether benefits are generally available in theory or not, but whether, *de*

[2/] As recently as February 4, 1988, in an administrative determination on subsidized corn imports into Canada from the United States, the Minister of Finance decided that he would decrease the countervailing duty from the C$1.10/bushel amount determined by Revenue Canada and reduce the amount to the level of C$.46. This latter amount was larger than the C$.30 amount that had been recommended by the Canadian Import Tribunal.

[3/] A relatively minor point of divergence is the statute- directed levels for profits and expenses under the United States antidumping law when constructing a foreign market value. 19 U.S.C. 1677(6)(e)(1)(B). In contrast, and following the Code text, the Canadian law directs a calculation based on a "reasonable amount" for those elements of value.

[4/] 564 F. Supp. 834 (CIT 1983).

[5/] 48 Fed. Reg. 29,564 (1983) (Final Determination).

facto, the benefits are actually provided in practice only to specific industries or within specific regions.

This administrative determination was reviewed by the Court of International Trade in Cabot Corp. v. United States,[6] a decision in which the Court stressed that while some benefits may be generally available, their actual bestowal may nonetheless constitute specific grants to specified, identifiable entities. The Department of Commerce further refined its Carbon Black rule on the occasion of its first administrative review of that order, establishing a "Preferentiality Appendix," whereby Commerce was seeking a tiered approach in its determination whether or not benefits were available only on a preferential basis.[7]

The "specificity test" later was applied to a proceeding alleging unfair payments by Canada to softwood lumber producers through its stumpage programs. This administrative proceeding is regarded by some as the greatest single strain on the two countries' bilateral trade. The Department of Commerce preliminarily determined that subsidies were being provided to the Canadian lumber industry,[8] noting that the specificity test cannot be reduced to a precise mathematical formula. Commerce applied its Carbon Black rule: it determined not only the extent of general availability of a government program, but also the extent to which the number of industries actually participated in the programs.

Although this standard of benefits available on a de facto preferential basis has been developed within the administration of U.S. countervailing duty law, the issue has not yet arisen under Canadian law. It is thus unknown whether Canadian jurisprudence would reach the same result were the question to be considered by a Canadian tribunal.

From the Canadian perspective, application of U.S. trade laws results in instability and unpredictability in spite of formal similarities. In 1985 the MacDonald Commission[9] wrote:

> "U.S. trade policy is created and applied through political and legal processes which decentralize decision-making power and enhance the political influence of relatively small and narrowly based interest groups such as unions and trade associations. The most notable examples of this fragmentation of power within the U.S. system are legal mechanisms that afford producers contingent protection from import competition."

6/ 620 F. Supp. 722 (CIT 1985).

7/ For a further discussion of the development of this standard, as well as for a discussion of the U.S.-Canada Softwood Lumber Agreement, see Holmer and Bello, U.S. Trade Law and Policy Series #11, 21 Int'l Law. 185 (1987).

8/ 51 Fed. Reg. 37453 (1986) (Prelim Determination).

9/ Report of the Royal Commission on the Economic Union and Development Prospects for Canada.

As an official of the Canadian Department of External Affairs recently put it,[10]

> "Under a tariff regime, the potential exporter/investor can calculate with relative certainty the additional cost of the barrier and make business decisions accordingly. But contingency protection [such as U.S. import regulation] is based on a host of factors that cannot be determined in advance. The exporter/investor has an uncertain base upon which to perform his calculations, plan his business and take decisions. The uncertainty which the possible application of contingent penalties such as a temporary quota or a countervailing duty engenders, may not only affect existing trade but may influence future investment decisions and have a profound impact on an industry's performance and growth prospects for years to come.
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> * * *
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> "Parallel to the development of a regulatory system of protection, the US Congress vested private citizens with rights to certain forms of relief from foreign competition, including the right to trigger investigations for the purpose of obtaining relief. A private US citizen can invoke a variety of different actions to seek redress against the practices of foreign governments and business and to limit import competition. As a result of 1) low thresholds required to trigger investigations; 2) procedures tending to favour complainants; and 3) lax standards for finding the existence of 'unfair' trade practices, measures to counteract such practices have in themselves become barriers to trade."

In summary, it appears that the two statutory schemes are virtually identical. The point of divergence lies in the administrative practice developed by U.S. administering agencies. The Canadian perception is that the U.S. administrative and legal system at present is overly politicized and favors complainants. The FTA seeks to address this strong philosophical difference, at least during an interim period of up to seven years, through a new dispute resolution mechanism that is said to preserve existing substantive law of both nations. This mechanism is new to U.S. trade law, and it is different in some ways from other international precedents.

III.

Precedents in Transnational Dispute Resolution

Various types of mechanisms have been used to resolve commercial disputes between citizens of one nation and citizens or agencies of another nation. While many such matters are resolved in the courts of the United States or another nation, others are heard before arbitral bodies or non-national judicial tribunals. In addition, the resolution of disputes between nations is a source of jurisprudence and practice in the use of arbitral and other non-national fora.

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[10] Hart, Trade Remedy Law and the Canada-United States Trade Negotiations (ABA National Institute, Jan. 28-29, 1988, course materials at 274-75).

The experience of U.S. parties in the use of such transnational mechanisms has been, on the whole, quite favorable. International commercial arbitration, under the auspices of arbitral institutions or ad hoc pursuant to rules such as those of the United Nations Commission on International Trade Law ("UNCITRAL"), regularly leads to the resolution of contract-based trade and investment disputes. International investment disputes also are arbitrated under the auspices of the World Bank's International Centre for Settlement of Investment Disputes and may be arbitrated under auspices of the Multilateral Investment Guarantee Agency ("MIGA") or pursuant to Bilateral Investment Treaties between the U.S. and various other States.

Private claims against foreign States or their agencies sometimes are espoused by governments on behalf of their citizens and resolved in hybrid transnational fora where both governments and citizens play a role. The Iran-U.S. Claims Tribunal in The Hague has successfully resolved many American citizens' claims against Iran outside the mechanisms of national courts, and various international claims commissions to which the U.S. has been a party previously disposed of claims by Americans arising from particular foreign governmental acts.

Canadian citizens, too, have become recent enthusiastic participants in the regime of private international arbitration. Several provinces have enacted new legislation encouraging its use, and some Canadian cities have established international arbitration organizations to promote international commercial arbitration.

At the governmental level, the United States and Canada have a long history of resolution of their trans-border disputes through arbitral or non-national judicial means. Among the best known precedents are the Trail Smelter,[11] Gut Dam[12] and the Gulf of Maine[13] cases.

The governments of the United States and Canada also have experience with international arbitral resolution of governmental trade disputes through the GATT. The GATT dispute settlement system includes an arbitral panel procedure normally involving three or five members who usually are government officials from States other than the two parties and who are selected on an ad hoc basis by the Chairman of the GATT Council in consultation with the governmental parties to the dispute. Panel decisions, though not binding, often are adopted and followed.[14] Although private parties often bring complaints about allegedly unfair trade practices to the attention of their governments, sometimes leading to the institution of these panel proceedings, the disputing governments rather than the importers or exporters are the parties before GATT panels and control the proceedings there.[15]

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[11] 3 Reports of International Arbitral Awards (U.N. 1949) 1905, 1911, 1938; see 3 Whiteman, Digest of International Law 840-41.

[12] 3 Whiteman at 768-771.

[13] 1984 I.C.J. Rep. 246, reprinted in 23 I.L.M. 1197 (1984).

[14] Reform of the dispute resolution process within GATT has long been a goal of the United States. See ITC, Review of the Effectiveness of Trade Dispute Settlement Under the GATT and the Tokyo Round Agreements, Pub. No. 1793 (1985). (A report to the Committee on Finance, U.S. Senate, on Investigation No. 332-212 under § 332(g) of the Tariff Act of 1930.)

The FTA proposes a new hybrid dispute resolution mechanism, bearing some resemblance to what occurs when the U.S. or Canadian governments espouse private claims directed against actions of the another government. The form of antidumping and countervailing duty claims is different, since a foreign government is not a party, even though a foreign government's subsidy program is the subject of a countervailing duty proceeding. Indeed, the claims at stake could be those of an importer or domestic manufacturer against its own government. However, while private parties have been given substantive rights under the antidumping and countervailing duty laws of both nations, governmental decisions granting subsidies or imposing duties -- acts of governments involving international commerce -- underlie at least the countervailing duty claims. The FTA panel procedures would be in form a government-to-government proceeding, like an espousal or a GATT panel. However, like the procedures of the Iran-U.S. Claims Tribunal and unlike GATT procedures, under the FTA private parties would retain what appears to be a significant degree of control over presentation of their claims.

The experience of members of the New York bar in recent years with the Iran-U.S. Claims Tribunal and other modern espousal situations, in which private parties work with government officials in the presentation of international claims, has been good. However, this has been the result of (1) devotion of substantial U.S. governmental financial and human resources to assuring that the liaison task is performed well; (2) assurances of maximum feasible autonomy of the private parties in controlling proceedings involving them; and (3) continuity of a small group of skilled U.S. lawyers who have served as judges or arbitrators.

The FTA trade dispute resolution provisions are potentially compatible with a system featuring these strengths, and they are set in the context of considerable American and Canadian experience with mechanisms other than national courts. However, careful attention to these concerns in the implementing legislation will be needed to assure that this potential is realized.

IV.

Potential Problems Involving the FTA

A. Constitutional Issues

At the outset, it must be noted that U.S. Constitutional questions are raised by the creation of binational panels which would have exclusive jurisdiction over the matters committed to them. They would oust the U.S. Court of International Trade (and courts superior to it) of judicial review of antidumping and countervailing duty administrative determinations. These determinations have the effect of increasing the Customs duties levied upon the importation of merchandise into the United States. Such increases in Customs duties are now reviewable by Article III Courts.

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[15] See generally Plank, *An Unofficial Description of How a GATT Panel Works and Does Not*, 4 J. Int'l. Arb. 53 (No. 4, 1987).

Under the FTA, a U.S. or Canadian citizen challenging an administrative determination of U.S. government agencies on the basis of, for example, violations of due process, would be entitled to no judicial review. He or she could seek review by a binational panel obligated to apply U.S. law, but its members probably would not be judges appointed with life tenure. Rather, most presumably would be private citizens, chosen ad hoc by the very U.S. government whose decisions were being challenged (and by Canadian officials); some naturally would have more familiarity with Canadian procedures and views than with the U.S. law to be applied; indeed, some might have very little experience with U.S. law, and some might not even be trained as lawyers. A further review could be sought in extreme circumstances before the "extraordinary challenge committee," and some of that committee's members might be U.S. judges well qualified in U.S. trade law.[16] However, decisions on whether to bring such a challenge seemingly would lie with the U.S. government, not the private parties, and U.S. nominees to this committee would be named by the U.S. government. In addition to the fear of some that these mechanisms would tend toward political rather than legal results, they might raise separation of powers, equal protection and other constitutional issues.

In the case of the Iran-U.S. Claims Tribunal, the Supreme Court found no impediment to the suspension of U.S. judicial jurisdiction over U.S. citizens' claims against Iranian entities and their transfer to a novel international tribunal.[17] While the circumstances and legal issues were of course different from those presented by the FTA, the Supreme Court relied in part on its view that claimants were receiving something arguably more valuable through access to a fund resulting from a sort of settlement with Iran.[18] The Court also suggested that claims might lie against the United States under the Tucker Act if this failed to prove true.[19]

The FTA dispute resolution mechanism might not be offering U.S. litigants in trade disputes something better than their existing rights. The binational panels may serve broad U.S. interests in amity and free trade with Canada, but they are perceived as a threat by some U.S. citizens. Unlike the Iran-U.S. Claims Tribunal, where the interests of the U.S. government and U.S. private claimants are generally well aligned, under the FTA U.S. citizens in particular cases might find their interests adverse to strong U.S. governmental interests. These inconsistencies could be removed by substantive changes in U.S. trade laws, as the FTA contemplates will occur within seven years (either through the processes of the binational panels or through legislation); but in the meantime, they are a source of concern.

16/ With appropriate amendments to 28 U.S.C., it seems that present and former judges of the U.S. Court of International Trade could be named to the roster from which extraordinary challenge committees would be formed.

17/ Dames & Moore v. Regan, 453 U.S. 654 (1981).

18/ Id. at 687.

19/ Id. at 688-90.

Members of the New York bar hold differing views concerning these constitutional issues,[20] but they share the belief that these matters have not been explored adequately to date in consideration of the FTA. We urge that proposed implementing legislation address these issues, to the extent that this is possible.

B. Implementation Issues

One set of implementation issues concerns adequate independence of members of the binational panels from influence of U.S. executive authorities who might choose and compensate them. We suggest that implementing legislation might be addressed to these concerns, consistent with the provisions of the FTA, by giving U.S. private parties in trade cases the right to control U.S. governmental selection, from the rosters, of panel nominees for their cases. Private parties might also be given the right to require U.S. governmental invocation of the extraordinary challenge committee review procedure, subject to penalties if such an invocation is found to have been clearly baseless.

Other issues concern predictability in the instance of a petition alleging the dumping of merchandise from several different countries, including Canada, into the United States. Under current U.S. law, the ITC is required to cumulate the effects of the allegedly dumped imports in determining whether or not the domestic industry has suffered material injury.[21] It is unclear how a binational panel reviewing the question of dumped Canadian goods would proceed in the face of a parallel Court of International Trade proceeding investigating the effect of goods being dumped from other countries, since the question of injury would be determined by the ITC on a cumulated basis. There would be two separate reviewing bodies, the binational panel and the Court of International Trade, reviewing a single administrative determination which would be inclusive in its scope, embracing the cumulated impact of the dumped imports from all countries involving the domestic industry in question. The binational panel, however, would have to restrict its inquiry into the impact of Canadian imports -- a determination not made by the agency below. We regard this as a question which must be addressed and resolved in the implementation of the FTA.

Finally, there could be a risk that a separate body of jurisprudence would arise, evolving from the determinations of the binational panels applying the two distinct bodies of U.S. and Canadian domestic law. The panels' determinations might give rise to decisions perhaps in conflict with the judicial pronouncements of the two nations' trade courts. This risk might be minimized by assignment of present or former U.S. judges of the Court of International Trade as members of the binational panels, but other ways should be sought to reinforce the FTA's requirement that the two nations' existing laws be applied unless and until there are further agreements on substantive changes.

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[20] Canadian lawyers also have questioned whether private parties may be deprived of a judicial forum in which to raise due process or other constitutional challenges to administrative action. See, e.g., McCarthy & McCarthy, The Canada-United States Free Trade Agreement: An Analysis at 43 (January 1988).

[21] 19 U.S.C. 1677(7)(C)(iv).

V.

Conclusion

The New York State Bar Association's Section of International Law and Practice applauds the efforts of the negotiators of the FTA and looks forward to further discussion of ways in which concerns with its dispute resolution mechanisms might be addressed.

March 18, 1988

Submitted By

Myron Yantzer

Secretary-Treasurer

North Dakota AFL-CIO

In 1988 the congress of the United States will be acting on legislation to implement the United States-Canada Free Trade Agreement.

We ask that you reject this agreement and send a message to President Reagan that this agreement should be re-negotiated with Canada, keeping in mind that Free Trade Agreements should have equal balance of trade, a level playing field to proceed on, and the use of our present system of disputes settlement, Antidumping and Countervailing duty court systems kept in place to handle any problems that may arise from these agreements.

There is little in the agreement that will benefit North Dakota workers or North Dakota in general. It does not take into consideration the present imbalance of trade between the United States and Canada or the exchange rate differential which is a contributing factor to the trade imbalance.

While the agreement moves in the direction of market determined trade, it leaves in place significant inequities in trade practices even after the ten year implementation or transition period. The agreement grandfathers many Canadian protectionist measures that will stop penetration of there market by our producers while we leave our markets virtually wide open for Canadian producers and exporters to begin the movement of their products into the United States and further threatening of the economic base and forcing more unemployment and disruption in the business, energy and agricultural communities.

To be more specific, I would like to address some areas of major concern to us, that being tariffs and energy.

Currently, Canadian tariffs average about 9 1/2%, while U.S. tariffs average about 4 1/2%. Presently about 25% of U.S.-Canada trade is subject to duties. All trade tariffs that are to be eliminated over a ten year period and are divided into three separate staging categories.

The second and third staging categories are of most concern to us. The five year duty elimination, the 20% per year schedule, contains such items as printed matter, chemicals, petroleum and some machinery while the ten year categories, 10% per year, contains such items as wood products, precision instruments, most agriculture and fish products.

The areas listed above are very sensitive to the world economy. Due to the poor economy in the Midwest and pressure from world markets, these industries have suffered tremendous economic losses over the past decade.

The implementation of the U.S.-Canada Free Trade Agreement will put more pressure on these industries due to the unfair method of reductions of tariffs. Essentially, Canada will retain its two to one tariff advantage for ten years.

Electrical power generation is an industry that stands in line for a direct hit from a heavily subsidized, provincial built, Canadian industry. I would like to point out that the Canadians do not require the EPA emission standards that the U.S. has now, nor do they require as strict of reclamation of strip mines?

All language in the Free Trade Agreement is written so the U.S. looks toward Canada for all future electrical needs rather than developing a self-sufficient energy system. No quantitative restrictions may be imposed on this industry except in case of national emergency or the extinction of a natural resource.

The agreement seeks to harmonize technical standards related to safety, health, environment, etc. However, because trade actions are precluded the emphasis will be on using the lowest common denominator for competitive reasons.

Another area that some thought should be given too is our long standing friendly relationship we have with our northern neighbors. While our cultures mirror one another in many respects the Canadians are very proud of there history and have taken steps in the agreement to protect there culture.

The main thrust of the Free Trade Agreement allows for heavy investment into each others countries. As U.S. investment bankers and multinational corporations begin to have more influence in Canada, one has to wonder how the Canadian people will react to this?

It should also be stated that the American workers can compete with any workers in the world, but no one can compete when the rules of the game don't apply fairly and evenly to both sides.

I would like to thank you for your consideration of our views on this very important subject.

NORTH DAKOTA
DEPARTMENT OF AGRICULTURE

Kent Jones
COMMISSIONER

Testimony by
Kent Jones, North Dakota Commissioner of Agriculture
before the
U.S. House Ways and Means
Subcommittee on Trade
for the Fargo ND Field Hearing on
U.S.-Canada Free Trade Agreement
March 11, 1988

Mr. Chairman and Committee Members:

As a Northern Tier state, North Dakota is concerned about protecting our agricultural industry from side effects resulting from the Free Trade Agreement with Canada. Accordingly, on January 27 my office hosted a joint meeting with our Canadian neighbors, including representatives of the row crop, cereal, livestock and chemical industries from both sides of the 49th Parallel. Additionally, we called in experts from Ottawa and Washington who helped write the Agreement. A full day was spent looking at the Agreement, and very briefly, following are the results.

> The chemical people (i.e., fertilizer, farm sprays, etc.) think that North Dakota will benefit from the Agreement, as it will potentially lessen the cost of production and this savings will be passed on to the consumer.
>
> The livestock industry is supportive of the Agreement, but encourages monitoring of the inputting legislation. The legislation must adjust the current meat import law formula downward to remove Canada's share in order to win full approval of the National Cattlemen's Association.
>
> Removal of non-tariff barriers will present advantages to the breeding stock end of the cattle business, especially the modification to blue tongue testing. Organization of a consultative committee to continue the move toward harmonizing health and sanitary requirements is also welcomed.
>
> Two of the main issues of concern to the U.S. Pork Producers can be resolved with further efforts. First, the current thirty-day quarantine on hogs shipped from the U.S. to Canada is a technical issue that can be resolved in further deliberations before the actual signing of the Free Trade Agreement. Secondly, the failure to eliminate Canadian federal and provincial subsidies will need to be resolved in the current multilateral trade negotiations.
>
> The cereal grain people are quite vocal in opposition to the Agreement. Great fear was expressed about the possibility of our markets being flooded by Canadian commodities due to more attractive pricing conditions in our country. Safeguards need to be put in place to prevent this

(continued...)

STATE CAPITOL BISMARCK, NORTH DAKOTA 58505 (701) 224-2231

happening, either north or south of the border. They realize that our proximity to Canada gives the Northern Tier states a unique situation, in that we would feel considerable impact on our basic industry of wheat raising, whereas producers in Alabama or Arizona or Texas would not. The barley growers expressed similar feelings, and their situation is further complicated by where beer brewing and cattle feeding take place.

Canadians initiated a support program for the dry edible bean industry last spring. U.S. bean growers do not benefit from any similar program, and feel this could cause a significant impact on our bean industry because Canadians have chosen to market their beans in the U.S. and, due to the support program, they can sell at less than the U.S. cost of production.

U.S. sugarbeet growers question why Canada, which produces less than ten percent of its sugar needs, should be able to export sugar-containing products to us. They are afraid the cheap sugar which Canada imports from Cuba and South Africa will find its way into products exported to the U.S. They have proposed that legislation be written so that the quantity of sugar imported be limited to Canadian production.

An interesting factor of the joint meeting was that most of the participants, from all segments of agriculture, feel the concept of free trade is good. By the same token, most participants feel we should walk very carefully and protect the Northern Tier states from grain pouring over the border in unfair competition to lower our market prices.

My own sentiment is also that the concept is good. We have the same soil, the same air, the same people, and the same crops. However, I recognize that the Third World countries are in the process of stepping up production and will be new competition to our agricultural industry in the coming decades. I believe, if the implementing legislation is written to accommodate the concerns I have mentioned, U.S. and Canadian markets will be able to work together more cohesively and will become stronger and more able to compete effectively with the Argentinians, the Australians, and the Europeans.

I appreciate the opportunity to furnish testimony for consideration of the Subcommittee on Trade.

NORTH DAKOTA
GRAIN DEALERS
ASSOCIATION

212 Black Building
Fargo, N. Dak. 58102
Phone 235-4184

STEVEN D. STREGE
Executive Vice President

ANN KORZENDORFER
Assistant Secretary

March 11, 1988

Record

The Honorable Byron Dorgan
Congressman for North Dakota
238 Cannon Office Bldg.
Washington, DC 20515

Re: House Ways & Means Trade Subcommittee hearing on U.S.-Canada Free Trade Agreement.

This trade Association represents the interest of the nearly 575 licensed and bonded country elevators in North Dakota. These elevators handle nearly all the 500+ million bushels of grain and oilseeds shipped from this state each year.

The North Dakota Grain Dealers Association would like to go on record at this hearing as opposed to the U.S.-Canada Free Trade Agreement in its present form. There seem to be too many examples of U.S. farmers being disadvantaged by the Agreement, particularly in the area of cereal grains. These no doubt will be listed a number of times by other spokesman at today's hearing. If those areas are corrected then perhaps support for the Agreement could be given.

Free trade sounds find, but fair trade sounds even better.

NORTH DAKOTA GRAIN DEALERS ASSOCIATION

Steven D. Strege
Executive Vice President

ndgda

CHARLES F. MERTENS
State Representative
Chairman

JOHN D. OLSRUD
Director

JAY E. BURINGRUD
Assistant Director

CHESTER E. NELSON, Jr.
Legislative Budget
Analyst & Auditor

KATHERINE
CHESTER VER WEYST
Code Revisor

North Dakota Legislative Council

STATE CAPITOL — BISMARCK 58505-0183 TELEPHONE (701) 224-2916

MAR 03 1 [illegible]

February 29, 1988

Honorable Byron Dorgan
United States Congressman
238 Cannon House Office Building
Washington, DC 20515

Dear Congressman Dorgan:

As authorized by the North Dakota Legislative Council, the following policy statement was adopted by the North Dakota Legislative Council's interim Agriculture Committee at its January 18, 1988, meeting:

> The North Dakota Legislative Council's interim Agriculture Committee opposes the approval of the Free Trade Agreement, in its present form, between the United States and Canada.

Enclosed are the minutes of the January 18, 1988, meeting of the interim Agriculture Committee which contain a discussion of the proposed agreement on pages 8 through 11.

Sincerely,

Allen Richard

Senator Allen Richard
Chairman
Agriculture Committee

AR/nb
Enc.

FREE TRADE AGREEMENT

Representative Shockman read a policy statement to the committee that deals with the Free Trade Agreement between the United States and Canada. The statement opposes approval of the agreement. He said it is an agreement, which can be approved by a simple majority vote in both houses, rather than a treaty, which can only be ratified by a two-thirds vote. However, he said, the agreement is similar to a treaty because future Congresses will have no authority to modify it. He said Montana and North Dakota are the two states that are affected most adversely by the Free Trade Agreement.

Representative Shockman said his primary reason for opposing the agreement is that he does not know what is in the agreement. He said many people were unaware of all the provisions in the Food Security Act of 1985 and now several problems have arisen because of what is in that Act. He said the same thing could happen with this agreement. He said it appears that producers on both sides of the United States-Canadian border are against the agreement and the industrial sector is for the agreement.

Senator Bakewell said he lives by the border and is unaware of any producer across the border who does not like the agreement. He said we do not know if provisions in the agreement will be damaging to producers but we need to start someplace. He said he opposes the policy statement. He said the government is studying the agreement and the citizens of the states have representatives in Congress to protect their interests. He said the commodity groups are opposing the agreement. He said even if the agreement is approved, trade will not take place unless the subsidies in both countries are equal. He said he does not want to send a policy statement to the Congressional Delegation from the interim Agriculture Committee because he is a member of the committee and he opposes the statement.

Representative Nowatzki said we need to proceed cautiously. He said the most thorough publication he had seen regarding the agreement was written by a number of leading agricultural economists from the Midwest and was published by the University of Illinois. He said that publication indicates that the chief benefactors in the United States would be the consuming public. He said the persons affected detrimentally by the agreement would be the producing public, specifically those who produce specialty crops. He said we have already experienced a reduction in the production of mustard seed, flaxseed, rapeseed, sunflowers, and to some extent specialty crops like durum. He said the damage in this area has been caused by the imbalance in the dollar between the two countries. Because of the relatively high value of the United States dollar compared to Canadian currency, United States consumers can purchase 30 percent more agricultural products in Canada than they can in the United States.

Representative Melby said he also had mixed feelings about sending a policy statement. At the request of Representative Melby, committee counsel described the Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council, which require that all communications expressing policy of an interim committee must be referred to the Legislative Council chairman for approval prior to introduction during a legislative session, publication, or distribution. She said the chairman of the Legislative Council, Representative Charles F. Mertens, had sent a letter to all committee chairmen discouraging policy statements by interim committees. She said that in the letter the chairman indicated that if there is sufficient time for action he would take requests to issue policy communications before the Legislative Council.

Senator Richard said the Free Trade Agreement is an agreement to further agree. He said there are a number of items in the agreement that cause him concern. He said Congress has the authority to impose tariffs or import quotas on commodities coming into the United States if those commodities are lowering prices to producers in the United States. He said under the Free Trade Agreement, the United States would waive that right for

Canadian trade. He said he is concerned that our markets could be flooded with Canadian products. He said that if we waive our right to impose tariffs or import quotas on Canadian goods, the United States may alienate other trading partners because the United States would be able to impose quotas or tariffs on the same products from other countries that it was importing from Canada without tariffs or quotas.

Senator Richard said there may be some reduced costs for consumers in the United States; however, inporting Canadian products would put American people out of work. He said the overabundance of Canadian hydropower will cause further erosion of job security in the coal industry and potential erosion of development in the oil industry. He said the people who drafted the agreement admit that the people who would be most adversely affected by the agreement would be durum, hard red spring wheat, and barley producers along the Canadian-United States border. He said the agreement consists of several hundred pages and could contain some very detrimental provisions. He said if this agreement is so good, maybe it should be made into a treaty and ratified by two-thirds of Congress.

Representative Melby said he is inclined to vote for the policy statement because such a statement would send a message to the members of the North Dakota Congressional Delegation that they should take a good look at the agreement.

Senator Vosper said he would need more information about the agreement in order to decide whether to vote for the policy statement opposing it.

Representative Watne said even though the agreement provides that grain will not be traded until subsidies in both countries are equal, there are several areas that are not addressed. He said Canada's Crows Nest rate for shipping is not a part of the agreement and that rate is a form of subsidy. He said the United States will not be on a level playing field with Canada until all of these matters are addressed. He said he is also concerned there is no option for changing the agreement once it is approved. He said he supports the policy statement.

Representative Vander Vorst said if the committee opposes the agreement, it may be opposing future amendments to the agreement. Representative Melby said the policy statement should be changed so that the agreement would only be opposed by the interim committee in its present form.

Representative Shockman said a copy of the policy statement should be sent to the United States Department of Agriculture and the North Dakota Congressional Delegation.

IT WAS MOVED BY REPRESENTATIVE SHOCKMAN, SECONDED BY SENATOR KRAUTER, AND CARRIED ON A ROLL CALL VOTE THAT THE LEGISLATIVE COUNCIL'S INTERIM AGRICULTURE COMMITTEE REQUEST AUTHORIZATION FROM THE CHAIRMAN OF THE LEGISLATIVE COUNCIL TO ISSUE THE FOLLOWING POLICY STATEMENT: "THE NORTH DAKOTA LEGISLATIVE COUNCIL'S INTERIM AGRICULTURE COMMITTEE OPPOSES THE APPROVAL OF THE FREE TRADE AGREEMENT, IN ITS PRESENT FORM, BETWEEN THE UNITED STATES AND CANADA." Voting in favor of the motion were Senators Richard, Axtman, Hilken, Krauter, Vosper, and Wogsland; and Representatives Melby, Nowatzki, Riehl, Shockman, Vander Vorst, and Watne. Voting against the motion were Senator Bakewell; and Representatives Murphy, Nicholas, and Shide.

Representative Nicholas said he voted no on the motion because he did not have enough information about the agreement at this time. He said he might vote differently at a later date.

IT WAS MOVED BY REPRESENTATIVE RIEHL, SECONDED BY REPRESENTATIVE WATNE, AND CARRIED ON A ROLL CALL VOTE THAT IF THE CHAIRMAN OF THE LEGISLATIVE COUNCIL AUTHORIZES ISSUANCE OF THE STATEMENT, THE

LEGISLATIVE COUNCIL STAFF BE REQUESTED TO PREPARE THE POLICY STATEMENT PROPOSED BY REPRESENTATIVE SHOCKMAN AND TO FORWARD A COPY OF IT TO EACH MEMBER OF THE NORTH DAKOTA CONGRESSIONAL DELEGATION AND TO THE APPROPRIATE OFFICIAL AT THE UNITED STATES DEPARTMENT OF AGRICULTURE. Voting in favor of the motion were Senators Richard, Axtman, Hilken, Krauter, Vosper, and Wogsland; and Representatives Melby, Nowatzki, Riehl, Shockman, Vander Vorst, and Watne. Voting against the motion were Senator Bakewell; and Representatives Murphy, Nicholas, and Shide.

Senator Bakewell and Representatives Nicholas and Shide said they wanted it noted in the minutes that they were voting against the motion because they did not have enough information at this time to make a decision whether to oppose the Free Trade Agreement.

COMMITTEE DISCUSSION

Representative Nowatzki said he likes the procedure that Minnesota has for resolving disputes relating to grain protein. He said it is a good idea to use the existing laboratories in the state for protein testing.

Representative Vander Vorst said having a third party make the determination is fair to both the farmer and producer.

Representative Nowatzki said he does not think there would be much opposition to the proposal.

IT WAS MOVED BY REPRESENTATIVE MELBY, SECONDED BY SENATOR NOWATZKI, AND CARRIED THAT THE MEETING BE ADJOURNED. Chairman Richard adjourned the meeting at 11:30 a.m.

Julie Krenz
Committee Counsel

Northarvest Bean Growers Association
RR 3, Box 520 • Frazee, Minnesota 56544 • Office (218) 334-6351

TIM COURNEYA
Executive Vice President

Written Testimony
On
US-Canada Free Trade Agreement
Northarvest Bean Growers Association
Contact Person: Tim Courneya, Executive Vice President

This is a statement for the record on the Canadian Free Trade Agreement meeting that was held March 11th in Fargo, North Dakota.

We, the Northarvest Bean Growers Association, represent 4,000 producers that grow dry edible beans in North Dakota and Minnesota.

We have an important issue in front of us and hopefully when you are done reading this testimony you'll understand our concerns. On the basis of what we know, it doesn't seem to our advantage. We would like to have you weigh carefully the impact it would have on the dry bean industry when reading the remaining facts.

The dry bean industry has made great changes since it first began in 1960. It has advanced and become a 100 million dollar industry for producers of Northarvest.

The state of Michigan has developed a business over some one hundred years which also approximately generates 100 million dollars of income annually; in addition to our bordering states, the dry edible bean industry has a profound-effect on the other large producing states, such as Nebraska, Idaho, California and Colorado. If we lay down and die, several hundred million dollars worth of farm income will move across the border to Canada.

The dry bean industry is uncertain as to how the free trade agreement will affect them. The U.S. dry bean industry is free of government regulations--we have no storage programs, and no government support programs.

In spring of 1987, Canada initiated a program (Tripartite) with supports for producers. Tripartite has three parties involved: Provincial Government, Federal Government and Growers. It is a voluntary program with an anticipated 99.9% grower sign up for the 1988 dry edible bean crop. In Ontario, Alberta, Saskatchewan, and Manitoba, farmers can sign up their number of dry bean acres, and for each 100 pounds of their total production sold, they are guaranteed a support price. The problem is that with Canada's support on dry beans, they must market all their beans within a twelve-month period. In the U.S., we only sell what the market will bear.

Canadians receive a support price of approximately $16.00-$20.00, while in the U.S., our market price (fall of 87) was $9.00 for navy beans, and $10.00 for pinto beans. This could fall to $4.00-$5.00 per hundred weight in the future years because of Tripartite and the U.S.-Canada Free Trade Agreement.

Now Canada has chosen to market their beans in the U.S., and their system allows Canada to have a cheaper product for sale. This scares U.S. bean growers, because we don't know what impact Canada will have on U.S. soil. However, we feel this impact could be significant because Canada can sell beans for less than our U.S. cost of production, which is approximately $12.00-$13.00. There are no acreage limitations in the Canadian program, and once you sign up, you're obligated to participate for three years.

In addition to Tripartite, the Canadians also have a special grains provision which is designed to supply money to crops of need, including beans. The net result is that when the price of selling Canadian beans drops below $17.70 (U.S. funds), the provision means the government will step in and pick up the deficit.

The problem is that the U.S. anticipates a decrease in its edible bean acreage, while Canadian planting could increase.

For the record, Northarvest Bean Growers Association are opposed to the U.S.-Canada Free Trade Agreement as written. It is fair to say--the dry edible bean industry could very well be destroyed.

STATEMENT OF THE
OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR (OCITA)
ON
THE UNITED STATES - CANADA FREE TRADE AGREEMENT
BEFORE THE SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

The Office of the Chemical Industry Trade Advisor (OCITA) is pleased to have this opportunity to express its views on the United States/Canada Free Trade Agreement (FTA). The FTA is an important step toward free trade with the largest trading partner of the United States. OCITA supports the Agreement, and urges that appropriate implementing legislation be passed by the 100th Congress. We commend the U.S. negotiators on this historical achievement, and look forward to providing advice and working with the Congress in the FTA implementation process.

OCITA was established in 1973 to coordinate the chemical industry's responses to policy matters under consideration by the U.S. government.

OCITA represents the Chemical Manufacturers Association (CMA), the National Agricultural Chemicals Association (NACA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), and the Society of the Plastics Industry, Inc. (SPI). OCITA's members represent an important part of this nation's productive capacity for industrial chemicals. In 1986, shipments of chemicals and allied products amounted to $216.2 billion, of which 10 percent were exports. In 1987, the chemical industry accounted for a trade number of more than $9.5 billion. Trade with Canada accounts for a significant portion of the industry's export shipments. The FTA not only affects our exports to Canada but the overall economic health of the industry as well.

Introduction

Throughout the negotiations on the FTA, OCITA monitored the potential effects of the Agreement on the chemical industry and offered advice to the Administration. The FTA signed on January 2, 1988, by President Reagan and Prime Minister Mulroney reflects much of that advice and addresses many of the concerns OCITA raised during the process. The Agreement should advance the economic interests of the United States, and OCITA believes it will benefit the chemical industry. We believe that certain provisions can be improved and urge that future work be so directed as the FTA is implemented. Our comments on the areas where we would like to see improvements made are intended as statements of direction for future improvements of the FTA.

The remainder of OCITA's statement expresses our views regarding specific provisions of the FTA, their impact on the chemical industry, and our recommendations for Congressional consideration during the debate on FTA implementing legislation. OCITA recognizes that use of the so-called "fast-track" approval procedures (Section 151(c) of the Trade Act of 1974, 19 U.S.C. § 2191(c)) will preclude amendments to the implementing legislation, but offers its views in the hope that our suggestions will be considered by the Congress and the Administration as they finish drafting the appropriate legislation.

A. Energy

Overall, OCITA believes the energy provisions of the FTA will benefit the chemical industry. OCITA welcomes the energy provisions (Articles 901-909) of the FTA that provide for unrestricted and secure energy market access, elimination of two-tier pricing and the prohibition of import/export taxes and fees. The provisions related to energy regulatory measures, national security restrictions, and state/provincial governments should enhance access to hydrocarbon supplies, and improve opportunities for consultation on energy sector disputes that may develop.

B. Tariff Reductions

The tariff eliminations covering chemicals (Article 401) reflects the advice of the industry. In OCITA's view, these provisions are completely acceptable, assuming that non-tariff barrier obligations under the FTA are met. The tariff staging provisions for chemicals provide for balanced reductions of U.S. and Canadian tariffs on chemical products to allow for adjustments that will be necessary.

We are particularly pleased with Article 401.5, which provides for consultations leading to the acceleration of tariff eliminations. This article does not of itself establish a procedure by which acceleration agreements will be reached. OCITA urges that the implementing legislation stipulate that the private sector must be involved in consultations for accelerated tariff elimination. We believe that neither the U.S. government nor Canadian government should unilaterally initiate the acceleration provisions of the FTA without some initiative from the private sector. OCITA believes it is essential that the germane, potentially-affected industries be consulted prior to negotiations by the U.S. government. Moreover, controversial or disputed accelerations should not, as a matter of policy, be the subject of negotiations in this area.

C. Rules of Origin

OCITA believes that the rules of origin (Articles 301-304) applicable to chemical products will substantially reduce the opportunities for third-country imports to receive preferential treatment in the U.S./Canadian context. In addition to a general rule of origin, primarily a 50 percent U.S./Canadian content value-added requirement, the FTA also provides specific rules for certain chemical products in Annex 301.2, Sections VI and VII. These sector-specific rules establish an excellent working foundation for the negotiation of similar, multilateral rules of origin in the Uruguay Round on the General Agreement of Tariffs and Trade.

D. Investment Provisions

OCITA is generally pleased with the investment provisions of the FTA (Articles 1601-1611). In particular, OCITA welcomes the elimination of performance requirements and the prohibition on the adoption of more stringent investment-related requirements than those in effect on October 4, 1987. On balance, the investment provisions of the FTA should reduce barriers to investments, encourage increased capital flows and help create new jobs in both the United States and Canada.

OCITA is concerned, however, with the review provisions of the FTA. The Agreement establishes a higher threshold review level for investments in Canada of C$150 million. Many chemical-related acquisitions which may be undertaken in the future will exceed that level. Also, it does not change the existing restrictions on U.S.

investments in oil and gas operations in Canada with respect to future investments. OCITA believes that further clarification of the "grandfather" provisions for inconsistent, existing legislation, as well as more complete definitions of direct and indirect investments, are required. For example, the FTA does not specify at what point a firm will be considered to be foreign-controlled for the purpose of investment reviews.

E. Safeguards

Aside from consultations permitted under Article 1804, the FTA provides no remedy for temporary trade distortions caused by currency fluctuations. OCITA believes consultation on exchange rates may not be enough in the short term. Special, temporary adjusting remedies should also be considered.

In addition, OCITA is concerned that the FTA may seriously restrict the ability of U.S. industries injured by the duty-free entry of Canadian goods to obtain the full relief currently provided in Section 201 of the Trade Act of 1974. FTA Articles 1101 and 1102 would apply more stringent standards for import restrictions on Canadian goods than is currently permitted. OCITA recognizes that changes may not be possible in this area, but hopes that industries suffering injury will be able to obtain appropriate redress through the dispute resolution procedures of the Agreement.

F. Dispute Resolution

OCITA believes that the general provisions regarding dispute resolution (Articles 1801-1808) are fair and workable, but the question of private sector involvement in the dispute resolution procedures must still be resolved. Under Article 1807, if the United States - Canada Trade Commission does not resolve a dispute within 30 days, and does not refer the matter to binding arbitration, and if either party so requests, the Commission must establish a panel of experts to hear the matter. Similarly, Article 1904 provides for binational review of decisions relating to antidumping and countervailing duty matters. While the procedures particular to each of the two types of panels differs, the FTA does not detail the qualifications of panelists (except that no binational panel member may be "affiliated" with either party, under Article 1901.2).

OCITA urges that the implementing legislation expressly provide that non-governmental experts -- preferably drawn from the affected industries -- be eligible for selection to the panels. In every case, selection should be based on the technical expertise of the proposed panel member on the issue raised in the dispute. Further, the implementing legislation should designate the federal office responsible for naming and approving persons to the roster of eligible panelists. With these changes, those best qualified to bring the necessary technical expertise to the process can take part in the decision-making process.

OCITA is also concerned about the loss of judicial review of antidumping and countervailing duty cases prior to commencement of the binational panel mechanism. The restrictions on judicial review may cause interpretive difficulties with the FTA, and may prejudice the rights of private litigants in antidumping and countervailing duty cases not pursued by either the U.S. or Canadian governments. OCITA suggests that the issue of judicial review be given careful scrutiny as the FTA is implemented.

G. Protection of Intellectual Property

Article 2004 of the FTA provides that the United States and Canada "shall cooperate in the Uruguay Round of multilateral trade negotiations and in other international forums to improve protection of intellectual property." Thus, despite implicit recognition that intellectual property concerns merited consideration by the negotiators, the FTA imposes no substantive obligation on either party. In fact, neither the United States nor Canada is committed to undertaking any bilateral negotiations aimed at an agreement, or even developing a framework to address intellectual property matters.

OCITA is concerned that intellectual property issues considered in a multilateral framework such as the Uruguay Round might not receive the priority attention they deserve. For this reason, OCITA supports the addition of language in the U.S. implementing legislation which provides for a commitment to negotiate substantive provisions for intellectual property protections with Canada, after the FTA is implemented. Such language would not detract from the FTA, but would encourage the conclusion of an intellectual property agreement which could serve as a useful model for the Uruguay Round.

In the FTA, the United States and Canada reached no agreement relating to the preservation of existing intellectual property protections, or relating to the imposition of more licensing requirements or similar restrictions. OCITA believes that a commitment on the part of the United States to maintain the status quo (as in the energy and investment provisions) for intellectual property protection would provide an incentive for the conclusion of a bilateral agreement in the near future.

H. Subsidies

The FTA contains no substantive provisions regarding subsidies, with the exception of Article 1907, which establishes a Working Party to consider "rules and disciplines concerning the use of government subsidies." The absence of any substantive, subsidy-related provisions not only fails to provide the Working Party with adequate direction, but also fails to state that countervailable government subsidies are undesirable instruments of trade policy. Article 104, by expressly continuing the obligations of each country under existing instruments, effects no change in the application of the GATT Articles VI and XVI, and the GATT Subsidies Code. Additionally, Article 2011 allows for the commencement of dispute resolution procedures if, for example, a subsidized import "nullifies or impairs" an expected FTA benefit. However, these provisions are inadequate to encourage a full review of government subsidy programs, and will not promote measures necessary to reform such subsidy systems. OCITA believes that the FTA implementing legislation should provide some basic direction to the Working Party on subsidies, at least in focusing efforts on defining "actionable" subsidies. Transparency in the Working Party deliberations should also be encouraged to allow for the consideration of private sector views during the process.

Conclusion

The Office of the Chemical Industry Trade Advisor appreciates this opportunity to present its views on the U.S./Canada Free Trade Agreement supports the FTA and OCITA. Efforts should not stop to build on the FTA and to add to its new provisions. The FTA establishes a basis to facilitate such future negotiations in areas where needed development has already been acknowledged.

OCITA believes the FTA will facilitate future U.S./Canada trade negotiations in a number of unresolved areas. The suggestions and additional procedures we have outlined in this statement are intended to strengthen the U.S. position in this and similar agreements. We offer to provide Congress and the Administration with any assistance that may be necessary in implementing this new trade relationship with Canada.

STATEMENT OF CECIL R. OWENS

PRESIDENT, PACIFIC TEXAS PIPELINE CO.

REGARDING UNITED STATES - CANADA FREE TRADE AGREEMENT

TO THE

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON TRADE

UNITED STATES HOUSE OF REPRESENTATIVES

March 18, 1988

Mr. Chairman and Members of the Subcommittee, mindful that the Congress will soon be considering legislation to implement the United States-Canada Free Trade Agreement, I appreciate the opportunity to express the views of Pacific Texas Pipeline Co. on the provisions of the Agreement regarding exportation of Alaskan North Slope crude oil.

Before addressing the provisions of particular concern to my company, I wish to state that the goals of the Free Trade Agreement are altogether laudable. By dismantling the barriers which now inhibit trade between the world's largest trading partners, the Agreement holds great potential benefits for Americans and Canadians alike. Nonetheless, any agreement of the scope of the Free Trade Agreement will inevitably raise legitimate questions as to where our true national interest lies. One such issue, in my opinion, involves the Agreement's unprecedented provision permitting the export to Canada of up to 50,000 barrels per day of crude oil produced on the Alaskan North Slope and transported over the Trans-Alaskan Pipeline ("TAPS").

As your subcommittee considers this provision, the United States is importing roughly 40% of its crude oil requirements, much of it from insecure foreign sources. Canada, on the other hand, is a net exporter of crude oil. Canada exports about 675,000 barrels of crude oil per day.

Section 7(d) of the Export Administration Act, which generally limits exports of crude oil carried over TAPS, provides preferential treatment of Canada. Such exports to Canada are permitted if (1) there is a swap of a comparable amount of Canadian crude which results in lower acquisition costs for U.S. refiners, and (2) 75% of such cost savings are passed on to United States consumers. The provisions of the relevant annex to the Free Trade Agreement, however, impose no such limitations on the exportation of ANS crude oil. As of this date, I have heard no justification for the "gutting" of existing law in this regard.

Our company is in the process of constructing a major pipeline from Los Angeles, California to Midland, Texas which will have interconnections to Gulf Coast, Eastern and Midwest destinations. Once in operation, the pipeline will permit delivery of Alaskan crude oil to Gulf Coast refineries and points further east at prices considerably lower than presently necessitated by the cost of shipping this oil across Panama by pipeline or tanker through the Canal.

In our view, paragraph 3 of Annex 902.5 to the Agreement undercuts a basic tenet incorporated in United States law that Alaskan North Slope oil production should be used in the United States and not diverted to other countries unless the President finds and the Congress concurs that such diversion is in the national interest. This policy, grounded on both national security and economic considerations, is clearly furthered by our pipeline, which will provide Alaskan crude oil to Gulf Coast and other refineries without passage through the politically unstable Panama region and will do so at a transportation cost savings to shippers.

While 50,000 barrels per day may not by itself represent a high percentage of current Alaskan crude oil production, export of even this amount will set an unfortunate precedent in direct conflict with existing United States law and policy unless (1) compelling justification can be shown for such diversion and (2) appropriate conditions are placed on such export. If the existing consumer benefit requirement in section 7(d) is to be abandoned with respect to this oil, one essential condition should be a requirement of at least some quantifiable benefit to U.S. consumers.

As I have stated, our company opposes any relaxation of existing law governing exports of Alaskan North Slope crude oil to Canada unless there is compelling justification for doing so. We have been advised that the 50,000 barrel per day export authorization contained in the Free Trade Agreement was prompted by a request from Canada towards the end of negotiations and is intended to meet the particular needs of certain oil refineries located in British Columbia. While we have yet to be convinced that these refiners can even use 50,000 barrels of ANS crude, much less need it, we will defer to others in making that determination. We are, however, troubled by several major points:

- We are aware that the possible export of 200,000 barrels per day was contemplated early in negotiations between Canada and the U.S. This is certainly far greater than the aforementioned refineries can handle and raises questions as to the true purpose and validity of the 50,000 barrels per day export authority that was finally agreed upon.

- Currently the U.S. imports about 40% of its crude oil and this level is forecast to go higher. Therefore, relinquishing any part of our domestic supply seems questionable at best, particularly to a substantial oil exporter.

Currently about 25% of our nation's domestic oil supply is from Alaska's North Slope. About one-half of this is consumed on the West Coast and the remaining one-half is transported to Gulf Coast, Midwest and Eastern refineries. Any effort to remove this oil to Canada or any other foreign nation will simply mean more imported oil to replace the loss.

Nonetheless, if our government determines these British Columbia refineries to have genuine need and that supplying them with 50,000 barrels per day will not adversely affect national security or U.S. consumers, we will not oppose carefully drawn legislative authority to advance that limited purpose but, we submit, it is vital that the legislation and the legislative history make clear that by so authorizing such exports, Congress is not intending to open the door generally on exports to Canada or any other country of Alaskan North Slope crude oil.

For this reason, we believe it is imperative that the law and legislative history, at a minimum, be clear on the following points:

1. That the legislation implementing the FTA provision is a one-time limited exception to the provisions of section 7(d) of the Export Administration Act and is not intended by the Congress to presage a more general relaxation of the statute.

2. That the crude oil to be exported may only be used to meet the needs of the specific refineries in British Columbia which have inadequate access to Canadian domestic production and that such oil may not be used for any other purpose or be reexported.

3. That the maximum amount of ANS crude oil that can be exported under any U.S. law without meeting the conditions now imposed by section 7(d) is 50,000 barrels per day. (As you know, there is authority in the pending trade legislation which, if enacted, would permit export of ANS crude to Canada. Since the proferred justification for that provision is, again, the needs of the British Columbia refineries, there should be no more than 50,000 barrels maximum which may be exported.)

Mr. Chairman, I am grateful for the opportunity to have our company's views on this important subject considered by the Subcommittee. We would be pleased to respond to any requests that Members of the Subcommittee or its staff may have for additional information now or in the future regarding this subject.

THE PROCTER & GAMBLE COMPANY

WOLFGANG C. BERNDT
GROUP VICE PRESIDENT

1 PROCTER & GAMBLE PLAZA
CINCINNATI, OHIO 45202-3315

March 15, 1988

The Honorable Sam Gibbons
Chairman, Subcommittee on Trade
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Bldg.
Washington, DC 20515

Dear Mr. Chairman:

The Procter & Gamble Company urges ratification of the U.S.-Canada Free Trade Agreement for the following reasons: -

1. The Agreement will permit us to organize our business on a North American basis, rather than for separate and less efficient markets. We anticipate more specialized production serving less dispersed geographic areas that are unencumbered by existing artificial and uneconomic restraints. We expect to continue to use our plants in both the U.S. and Canada, but to use them more efficiently and effectively thereby freeing resources for new investments in this expanded market.

2. Consumers in both countries will benefit from improvements in their incomes and in the variety and quality of goods available to them. This is important to Procter & Gamble and to our 50,000 North American employees because our future depends upon the well-being of our consumers and our ability to serve their needs.

3. Both countries must remain globally competitive. Meeting this challenge is not just important to both countries' living standards, it is also important to their national securities and their world leadership abilities. The economic strength deriving from the Agreement is important to meeting this objective.

4. We do not believe there are any overriding aggregate costs or disadvantages to the Agreement. While there will be adjustments required in both countries, the staging of duty elimination and of reduced Canadian foreign investment review, for example, should minimize their impact.

5. While the Agreement may not be perfect, it does provide opportunities for future negotiated improvements - as does the Uruguay Round (which would receive added stimulus from its ratification). The Agreement should be judged on what it accomplishes, rather than on what was left undone. Rejection, or unilateral attempts at amendment during implementation would likely be counterproductive. Failure to ratify would not leave a status quo, but rather a difficult situation with Canada and a dubious future for the Uruguay Round.

Several times in the past century the United States and Canada have negotiated similar agreements - only to see them fail in the ratification process in one country or the other. Procter & Gamble hopes that this time the effort will succeed.

We appreciate the opportunity to comment and your interest in our views.

Very sincerely,

W. C. BERNDT

STATEMENT OF CONGRESSMAN JOHN G. ROWLAND
before the
SUBCOMMITTEE ON TRADE
of the
COMMITTEE ON WAYS AND MEANS
March 25, 1988

Congressman Gibbons and Members of the Subcommittee:

I would like to thank you for permitting me to testify today on the subject of the United States-Canada Free Trade Agreement (FTA). I am hopeful that my voice and those of my colleagues here today will be added to those who have previously urged the earliest possible introduction of enabling legislation. In this regard, I would like to commend you for holding this hearing.

Since the end of the Second World War, the United States has had to face the startling reality of an economy so diverse and expansive that no single trade policy could hope to satisfy all interests. However, America's long, glorious tradition of free-enterprise economics adapted the country to this reality. In general, we have always accepted the most utilitarian policy available; the policy which satisfied more interests became trade law. I believe that this policy is still the best for America.

Clearly, there are industries that for reasons of national security, or development, require special consideration. The computer and related semi-conducter are examples of industries that I have consistently supported in this regard. Our global competitiveness in these industries has direct implications for our national security. As a member of the Armed Services Committee, I am intimately aware of the need for a continuous, state-of-the-art supply of computer and semi-conducter technology and products.

However, the U.S.-Canada FTA, while not the trade palative everyone expects, does provide benefits for the vast majority of Americans and Canadians. At the same time, there is no national security risk involved. In fact, given the relatively inexpensive, but more importantly, reliable, supply of Canadian gas, oil and electricity that will be made available, this pact would actually bolster our national security.

I believe, however, that the most important aspect of the FTA is the proposed dispute-settlement provision. In recent years we have all had to face a new, perhaps more startling reality; a lower dollar alone will not reduce our trade deficit. There are many reasons for this phenomenon, including the fact that many of the countries who are running trade surpluses with us have currencies which are pegged to the dollar. Declines in the dollar's value correspondingly lowers the value of those currencies. The result: no reduction in their rate of surplus, but continuing and increasing rates of deficit for the U.S. Developing a viable and effective bilateral-dispute settlement procedure with Canada may well presage the day when we can better address our trade deficits with others through effective negotiation.

To put it as straightforwardly as possible, can we afford to ignore this opportunity? How long will it take us to learn the critical lesson of short-sightedness? Establishing a tradition of successful bilateral dispute-settlement with Canada holds the promise of expanding it to our other trading partners. If we cannot provide for open trade with a partner with whom we share a 3,000 mile common border, there is little hope that we will ever be able to address our global trade problem without suffering from recession and a lowered standard of living.

The benefits of free and open trade are especially clear to me. The State of Connecticut, whose 5th District I represent, leads the nation in the percentage of jobs created by and revenues generated from exports. Consequently, the Connecticut economy suffers from the adverse affects of trade wars and retaliation the most, but can afford it the least. If the answer to the trade deficit is to bolster U.S. exports relative to imports, then the idiom should more correclty read: "what is good for Connecticut, is good for America!" The U.S.-Canada Free Trade Agreement is good for Connecticut.

TESTIMONY BY
U.S. REP. PATRICIA SCHROEDER (D-COLO)
BEFORE THE
HOUSE TRADE SUBCOMMITTEE
March 25, 1988

Mr. Chairman, I appreciate the opportunity to present my remarks on the pending U.S.-Canada Free Trade Agreement.

As I reviewed the overall product of the U.S. negotiations, I kept in mind both my role as a representative of my constituents, and as a national legislator looking out for the national good.

What I saw was an agreement that is more beneficial, on both counts, than detrimental.

Denver, Colorado, and 8 Rocky Mountain states do substantial business with Canada in many different industries. The balance of trade is about equal, $200 million going both ways. Computer equipment, metals, and machinery, much of it for mining and drilling, lead the exports. Crude petroleum products, wood and wood products, and chemical products lead the imports.

The pending agreement allows the exporting industries to continue enjoying their vitality. Numerous computer equipment production facilities have sprouted In the corridor running south from Fort Collins through Denver onto Colorado Springs. Air Force contracts for computer test centers will produce more growth. Of the estimated 18,000 regional jobs produced by industries that export to Canada, The Bureau of Labor Statistics attributes over half of those to the computer equipment business.

The job mix is important too. Machinery production to computer programming covers a wide range of needed skills and education levels. There's something there for everybody.

The intangible benefit of the agreement to the city, state, and region is the relaxed trading atmosphere the document brings to other bi-lateral discussions. Most notable are negotiations on new air service route authorities.

Denver is the air hub for the Rocky Mountain catchment area. Stapleton International Airport has existing nonstop service to Calgary and immediate potential nonstop service to 4 other Canadian cities. This agreement does not cover aviation, but it will improve the atmophere for talks. In fact, air markets should improve since there will be more business reasons to fly back and forth.

Denver anticipates this with plans for a new international airport to be open just when the free trade doors swing open. The city, state, and region eagerly await the economic benefits from this. I do too.

I do acknowledge, however, the several regionally-entrenched industries that see this agreement as threatening. Most charge that because of existing Canadian transportation subsidies, oil and gas, agricultural, and other concerns, can't and won't play on the level field this agreement envisions.

No doubt I will be visited by many singing dirges about what the proposed U.S.-Canada Free Trade Agreement does to specific markets. But my question to them will be: "Is the overall gain from this more than the sum of the individual losses?"

I conclude yes.

Statement
of
Congressman David E. Skaggs

Thank you, Mr. Chairman, for the opportunity to testify regarding the effects of the Free Trade Agreement with Canada.

Overall, the Free Trade Agreement should have decidedly more positive, than negative, effects. Although the agreement will not produce absolutely "free" trade between the two nations, it is a major step into the right direction.

The improvements will be obvious throughout the country, but nowhere more than in Colorado. About one out of seven Colorado manufacturing jobs is dependent on exports to foreign countries. The national average is closer to one out of nine jobs. A large proportion of these export-related jobs are created by small and medium sized businesses, and it is very important that their export opportunities be freed of every impediment possible. The time for export promotion efforts is auspicious: with the recent currency exchange rate adjustments, once again goods made in the U.S.A. have a fair chance on the world market.

The major export industry in my district is high technology. More than 41,000 Coloradans are employed in the electronic and electric equipment and machinery industries, and 27,000 manufacturing jobs depend directly on exports. In 1986, Colorado companies exported $49 million worth of electronic computers to Canada, $12 million worth of medical and related equipment, and $9 million in miscellaneous telecommunication equipment. Other significant exports included motor vehicle engines and parts, measuring and laboratory equipment, medical equipment, unexposed films, and oil and gas machinery. Total exports from Colorado to Canada amounted to $207 million in 1987, an amount slightly more than Colorado's Canadian imports.

The immediate elimination of tariffs as well as the liberalization in service and investment industries will translate into many new export opportunities to the state's technology-based sectors.

I therefore expect Colorado to experience a net gain from the FTA. The agreement, of course, did not solve all the inequities in the trade relations between the U.S. and Canada. As an illustration, let me present three examples that have some relevance to the entire Rocky Mountain Region.

HIGH-TECHNOLOGY

The first case involves StorageTek, a major high-tech company based in Colorado and exporting into 35 countries. Much of their multi-million dollar business in Canada is with government-owned companies like Hydro-Quebec. In a recent contract renegotiation with the Quebec Ministry of Industry and Commerce, the company was faced with the choice either to reinvest a very high proportion of its revenues in the province or to be removed from the government's suppliers and bidders list.

Currently StorageTek is being required to reinvest a full 70% of its Quebec revenue (commercial and government revenues combined), and there are indications that the company will be requested to reinvest 100% of its revenue. This clearly constitutes a hidden tariff, unparalleled anywhere else in the world, and contradicts the FTA's general intent to do away with non-tariff barriers between the U.S. and Canada.

What is particularly vexing is that the province's performance requirements -- such as the reinvestment obligation -- apply to the U.S. company's commercial sales as well as to sales to the government. How does that fit into the investment provisions of the FTA?

I am well aware that, despite the desires of the U.S. negotiatiors, the Free Trade Agreement was explicitely written to eliminate these types of trade barriers only at the federal level, and failed to address provincial and state procurement practices. But there might be a way to draft implementation language prohibiting excessive requirements put on foreign investment by provinces or, for that matter, states, especially when government procurement is involved. Or, perhaps, another opportunity needs to be found to solve this remaining problem.

URANIUM

My second point relates to Article 902.5 of the agreement concerning the uranium industry. More than any other area in the U.S., the Rocky Mountain states have felt the impact of the growing foreign competition in the supply of uranium since the late 1970s.

Colorado used to be the largest uranium-producing state. That distinction was lost to Wyoming and New Mexico in the late 1960s, but Colorado has maintained its status as one of the lowest-cost producers because of its higher grade ore bodies. At its peak, Colorado had hundreds of mines, three mills and a leaching facility operating. Total employment was approximately 3,000 in the mines and 500 in the mills.

At present, no mills are operating in Colorado; five mines with approximately 300 employees continue to extract ore. Six of the country's remaining major producers are headquartered in Colorado, with approximately 200 home office employees.

Domestic demand by utilities varies between 35 and 40 million pounds of uranium, which represents 40% of the world demand. Current U.S. mines are capable of producing only 10 to 12 million pounds a year, and this is declining rapidly.

No wonder Canadian producers like the fact that the FTA will give them guaranteed free access for non-military purposes in the U.S. market.

Most people agree that the U.S. uranium industry needs to be made viable again for obvious national security reasons and also as a way to recognize the industry's efforts to recover in the last couple of years, efforts that have involved substantial high-risk investments.

The Administration maintains the FTA would not change the status quo: uranium imports for commercial usage from Canada have been virtually unrestricted anyhow. The point, however, is the failure of the FTA effectively to open up the Canadian markets to U.S. uranium producers, since the Canadian subsidies and guaranteed-access regulations artificially stave off competitors. The continued threat of cheaper and more abundant imports from Canada's highly subsidized uranium producers would endanger our goal of revitalizing the U.S. uranium industry.

I therefore commend and support Senator J. Bennett Johnston's and Senator Pete V. Domenici's initiative to provide temporary relief and a revitalization program for the domestic uranium producers. S.2097, which has passed the Senate, should be considered in the House before the Free Trade Agreement comes to the floor.

NATURAL GAS

Finally, Mr. Chairman, I would like to turn to the provisions in the agreement affecting natural gas producers. The state of Colorado is the third largest producer of natural gas in the Western mountain region, with a particularly high proportion of independent producers. Of the 500 billion cubic feet of natural gas reclaimed by all producers in the state, more than 85% comes from independent producers.

Today, Colorado's oil and gas producers are not in good shape. During the last 3 years, the industry and related businesses have lost about 10,000 jobs in the Denver metropolitain area alone.

Many independent producers feel that there are strong disincentives for domestic producers written into U.S. regulatory measures, when compared to Canadian imports, and they have asked Congress for redress as the FTA goes into effect. There is one regulation in particular relating to Canadian competition. It deals with the pricing policy for U.S. pipeline users, and is known as FERC Opinion 256.

FERC Opinion 256 did away with two different rate structures for U.S. and Canadian natural gas. Much of the western market's price structure, however, is not regulated by the FERC because the gas is imported directly from Canada by way of the Alaskan pipeline system, called ANGTS (Alaskan Natural Gas Transportation System). The natural gas in this pipeline system is not under the jurisdiction of the FERC.

Western domestic producers face a skewed price structure if they want to compete with the gas coming in through ANGTS. On the West Coast market, there is one federally mandated gas price for U.S. producers and another one for Canadian gas. I urge this Committee and the other appropriate House committees to look into statutory ways that would rectify the pricing system in the Alaskan pipeline system and, if necessary, extend FERC jurisdiction over ANGTS.

This federal regulation is only one part of a set of regulatory problems hampering the industry. The prospect of increasing competition from Canada's energy producers offers us the chance to take a hard look at the regulatory framework prevailing in the energy sector and to find solutions before the increasing competition begins to bite even deeper. Congress needs to create an even-handed regulatory environment in which our industries can compete.

CONCLUSION

In conclusion, Mr. Chairman, let me summarize my recommendations to the Committee. As Congress is moving forward on the Free Trade Agreement, as we should, we should also keep in mind the need to:

(1) advance liberalized procurement practices by provincial and state governments as they affect investment decisions;

(2) revitalize our domestic uranium industry; and

(3) push the federal regulatory process in the natural gas industry towards rationalizing and harmonizing a continental pricing structure.

Having said this, Mr. Chairman, I would still like to stress my general support for the agreement. Both Canada and the U.S. are agreeing to liberalize significantly their mutual trade relations -- already the most extensive ones in the world. The agreement is a clear sign to the world that prosperity can't be built on a beggar-your-neighbor policy. As Benjamin Franklin said it, "no nation was ever ruined by trade."

Thank you very much again, Mr. Chairman, for the opportunity to testify before your Committee.

TESTIMONY OF
REPRESENTATIVE JAMES A. TRAFICANT, JR.
BEFORE THE
HOUSE WAYS AND MEANS SUBCOMMITTEE ON TRADE

1136 LONGWORTH HOUSE OFFICE BUILDING
MARCH 25, 1988

I would first like to thank Chairman Sam Gibbons and the Members of the Trade Subcommittee for allowing me the opportunity to present testimony on the proposed free trade agreement between the United States and Canada. I believe it is vitally important that all points of view regarding this agreement are debated fully before the Congress takes a final vote. I want to thank the subcommittee for allowing me to participate in this process.

Today, I would like to touch upon a few of the areas of the proposed agreement which I feel could have negative implications for the U.S. economy and its workers.

One of the primary areas of concern involves the U.S. auto industry. Many of the current inequities which exist between the U.S. and Canada center around the 1965 Auto Pact. The provisions of this agreement have governed the bulk of bilateral automotive trade since 1965. Regrettably in my view, the proposed agreement fails to correct many of the present inequities while continuing to encourage the use of imported parts. The only substantive change proposed to the 1965 Auto Pact would restrict coverage to companies who have already qualified for benefits.

Several other areas of concern are worth noting involving the U.S. auto industry:

* Although attempts had been made to strengthen the North American value requirement for duty-free entry in the U.S. to 75 percent, the final agreement contains a 50 direct cost of manufacturing provision. As a result, it may difficult to assure the use of locally produced engines, transmissions and other major components.

* Under the proposed agreement, Honda would receive incentives from the Canadian government to increase production, but not U.S. production. This has come about because the value-added requirement for duty-free shipment to the U.S. is lower then the Canadian version under the proposed agreement.

* The proposed agreement would leave in place the production incentives for Honda, Toyota, and Hyundai until 1996. These incentives will transform into additional Canadian exports to the U.S.

* The 1965 Auto Pact would cover the GM-Suzuki joint venture, allowing the plant to import duty-free parts worldwide. This coverage comes despite the fact that the joint venture presently does not meet Canadian safeguards.

Another primary area of concern is the U.S. steel industry. I am deeply disappointed that the proposed agreement contains no provisions involving this industry. The Canadian government has consistently opposed any efforts to bring its steel industry under any kind of import restraint program.

Among the 40 countries not covered by voluntary restraint agreements (VRAs), Canada accounts for a large majority of the steel exports -- approximately 59%. In addition, the composition of Canadian steel exports has shifted to finished mill products indicating the Canadian steel industry is capturing more of the value added in the processing of finished steel products. Since 1984, U.S. imports of Canadian steel have risen approximately 650,000 tons annually. Steel imports from the more than 40 countries not covered by VRAs go a long way toward explaining why the import shares of the steel program are not being achieved. Canada, among others, have been able to take advantage of this situation by responding to the domestic demand for imported steel.

Yet despite this data and statistics, the proposed agreement does not contain any provisions addressing the U.S. - Canada steel trade situation.

Implementation of this proposed agreement is predicted to expand Canada's gross national product (GNP) by approximately 5 percent annually while U.S. GNP would grow by about 1 percent. Although I applaud the tremendous efforts of the U.S. and Canadian negotiating teams, I remain concerned about the long term economic impact of this proposed agreement on the U.S. Both politicans and economic experts agree that Canada stands to gain much more economically from the proposed agreement. In this instance, the U.S. must decide between the possibility of freer trade and the negative impact the proposed agreement will have on specific groups.

I want to again thank the Chairman and Members of the Trade Subcommittee for the opportunity to submit my views on the proposed free trade agreement between the U.S. and Canada.

United Fresh Fruit and
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March 16, 1988

The Honorable Dan Rostenkowski
Chairman
Ways and Means Committee
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The United Fresh Fruit and Vegetable Association urges you to support the U.S./Canada Free Trade Agreement as signed by President Reagan and Prime Minister Mulroney in January.

The agreement is an important first step to develop free trade between our two nations. We note, however, that the agreement does not address all issues impeding free trade of fresh produce. The most important of these is the lack of structure and direction in the agreement for harmonization of phytosanitary, food safety and labeling regulations. United urges that the implementing legislation for the agreement contain mandates to the U.S. Environmental Protection Agency, the U.S. Food and Drug Administration and the Animal and Plant Health Inspection Service to cooperate fully with their Canadian counterparts on addressing phytosanitary, food safety and labeling regulations in a timely manner.

The second major issue of concern is the continuation of Canadian domestic subsidies under the Agricultural Stabilization Act. Realizing that domestic subsidies may best be addressed in multilateral negotiations, United hopes that the U.S. government will not fail to address in the future this subsidy which provides Canadian horticultural producers an unfair advantage over U.S. producers.

The benefits of the agreement, however, outweigh these two concerns. The elimination of tariffs over ten years will bring the Canadian and U.S. fresh fruit and vegetable producers on a more even playing field. The elimination of the Canadian fast-track surtax mechanism in favor of the snap-back duty provision available to both countries will provide an important tool to rectify unfair disruptions in the marketplace.

The United Fresh Fruit and Vegetable Association supports the U.S./Canada Free Trade Agreement and hopes that in the future our two countries can continue to build on it. United urges you to lend your approval by supporting a quick ratification.

Best wishes,

Sharon E Bomer

Sharon E. Bomer
Director, Government Relations

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Telephone (202) 371-1316

United States Council for International Business

Serving American Business as U.S. Affiliate of:

The International Chamber of Commerce
The International Organisation of Employers
The Business and Industry Advisory Committee to the OECD
The ATA Carnet System

March 8, 1988

Robert J. Leonard, Esq.
Chief Counsel
Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Leonard:

The U.S. Council for International Business respectfully requests that its views be included in the written record of the Hearings in the U.S.-Canada Free Trade Agreement Legislation being held by the Trade Subcommittee.

The U.S. Council represents some 300 U.S. companies, law firms and organizations concerned about international economic policy issues that affect business opportunities. It has a unique role as the U.S. business organization that officially consults with major international economic institutions, including the GATT and the OECD, through its affiliations with the International Chamber of Commerce, the Business and Industry Advisory Committee to the OECD, and the International Organization of Employers. The Council has been one of the chief private sector spokesmen advising the U.S. government on American business objectives in the Uruguay Round. It has been closely following the U.S.-Canada negotiations since they were announced at the Shamrock Summit in March, 1985. Our members have carefully reviewed the agreement signed on January 2, and believe its implementation should be a high legislative priority for the 100th Congress.

Our statement strongly endorses the agreement. It cites six specific types of benefits offered by the agreement and notes, as well, the agreement's important ramifications for efforts to strengthen the multilateral trading system. The statement also mentions certain issues not resolved by the agreement, which should be given high priority under the agreement's procedures for further liberalization once it has been implemented. Enclosed please find six copies of our statement.

Thank you for your consideration.

Sincerely yours,

Joseph G Gavin

Joseph G. Gavin III
Associate Washington
Representative

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United States Council for International Business

Serving American Business as U.S. Affiliate of

The International Chamber of Commerce
The International Organisation of Employers
The Business and Industry Advisory Committee to the OECD
The ATA Carnet System

Statement of the U.S. Council for International Business on the Free Trade Agreement Between the United States and Canada

The U.S. Council for International Business endorses the Free Trade Agreement between the United States and Canada, which was signed by President Reagan and Prime Minister Mulroney on January 2, and we urge the United States Congress to act expeditiously to pass the implementing legislation necessary to give full effect to the agreement.

The agreement is a comprehensive undertaking addressing bilateral relations in such areas as investment and energy as well as trade and services transactions. The U.S. Council has conducted a comprehensive review of the agreement, drawing on the broad scope of the Council's activities and a membership of some 300 major U.S. companies, other firms and organizations from all sectors. The U.S. Council represents American business positions in major international economic institutions, such as the International Chamber of Commerce, on a wide range of issues, from trade and taxation to investment, energy and finance. The Council advocates a comprehensive approach to economic policymaking and has long endorsed as its primary objective an open system of world trade, finance and investment.

Although our review has identified areas of the U.S.-Canada bilateral economic relationship on which further work will be needed in order to extend the benefits of a free trade agreement to the broadest possible coverage, our main conclusion is that the agreement as it stands will significantly enhance the already relatively free flow of goods, services and capital between the two countries, with benefits for U.S. businesses, employees and consumers and for the U.S. economy as a whole (as well as for Canada). It represents an unparalleled opportunity for future enhancement of even closer and more open economic relations which must be seized now at the risk of subsequent loss. The advantages and opportunities of the agreement include the following:

- It will eliminate virtually all remaining tariff barriers in ten years or less and remove almost all other restrictions on the movement of goods.

- It establishes a services agreement based on the principle of non-discriminatory national treatment in all future regulations governing bilateral commerce in most services activities, and includes specific provisions for assuring liberalization or non-discrimination in the tourism, enhanced telecommunications and computer services, architecture and financial services sectors.

- It reduces barriers to investments, encourages capital flows in both directions, and guarantees U.S. investors against a return to restrictive Canadian polices of the past.

- It insures a more open North American market for energy, freer of cross-border trade restrictions on energy products, and provides assurances that Canadian energy policies will not be more restrictive in the future.

- It establishes workable dispute settlement procedures for resolving bilateral disputes relating to the agreement, and a process for negotiating further liberalization.

- The agreement is compatible with the Automotive Agreement of 1965, which was designed to reduce trade barriers and to improve employment and production in the automobile industry in North America.

We expect these provisions to result in more efficient and larger markets for U.S. products, more competitive prices and more investment and job opportunities. In the longer term the more open market created between the U.S. and Canada will help make U.S. exports more competitive in the global marketplace.

The significance of this agreement, however, reaches beyond its direct bilateral benefits. Some elements of the agreement, such as the services principles, the dispute-settlement mechanism, and the investment emphasis provide models for and challenges to the on-going multilateral trade negotiations in the GATT. The agreement covers substantially all trade and is compatible with the GATT obligations of both countries. Failure to implement this agreement would almost certainly deal a major setback to the U.S. efforts to strengthen the multilateral trading system now underway in the Uruguay Round.

The U.S. Council also recognizes, as is inevitable in any agreement addressing such a comprehensive and complex relationship, there are political sensitivities, short-term adjustments for some sectors and several areas that need further liberalization. Notable disappointments from our perspective include the inability of the negotiators to reach agreement on comprehensive provisions assuring more consistent and effective intellectual property protection. Another disappointment is exclusion of "cultural industries" from the agreement. Similarly, there is the failure to extend open public procurement beyond the existing coverage of the GATT Procurement Code, notably to telecommunications. The principles on services should be more fully applied to additional sectors. Further understandings on agriculture and subsidies will be necessary if current negotiations in GATT fail to reach appropriate agreements. In a bilateral context, more needs to be done by both countries to harmonize Federal-Provincial-State activities affecting foreign trade, investment and public procurement. Finally, both countries need to do more to remove restrictions in various areas, including services and investment, which are grandfathered in the agreement. Grandfathered Canadian restrictions on U.S. investment in Canada's oil and gas sector are a case in point. Nevertheless, our members believe these shortcomings are far outweighed by the benefits offered in the negotiated agreement. Moreover, the agreement establishes a process that will facilitate future negotiations on those unresolved issues, and we believe that implementation of the agreement is the essential first step toward resolving these remaining concerns.

In summary, we view this agreement as a unique historical opportunity to secure benefits of greater trade in goods and services, improved conditions for investment, more jobs, wider choices for consumers and better competitive opportunities for American business. The agreement is a one-time chance that is not likely to be repeated if either country fails to enact it now. It is in the U.S. business interest and the U.S. national interest to implement this agreement, and it will be a serious setback for the global economic system if this opportunity is lost. Our members, representing a cross-section of the U.S. business community with the most at stake, urge the U.S. Congress to implement the U.S.-Canada Free Trade Agreement expeditiously.

February 17, 1988

Statement By
Kenneth Y. Millian
Vice President, W. R. Grace & Co.
Submitted To The
House Committee on Ways and Means
April 8, 1988

U.S.-CANADA FREE TRADE AGREEMENT

On behalf of W. R. Grace & Co. and its member company, Ambrosia Chocolate Co., I want to express the following concerns as to negative impacts of the proposed U.S.-Canada Free Trade Agreement (FTA) on Ambrosia Chocolate Co.'s competitiveness domestically.

The FTA will reduce American and Canadian tariffs on cocoa-based products by ten equal cuts of ten percent a year beginning on January 1, 1989. Presently, Canada charges an import duty of 12.5% ad. valorem on all cocoa-based products, while the U.S. charges an import duty of 0% to 5% ad. valorem on chocolate products and 0% to 2.5% ad. valorem on confectioner's (compound) products. Since Canada has higher tariffs on cocoa-based products, Ambrosia, in theory, will benefit from an expanded free market.

However, the FTA left intact the U.S. domestic sugar price support program which maintains a high U.S. domestic sugar price. The price of sugar is important to chocolate manufacturers such as Ambrosia, because chocolate products by weight contain up to 60% sugar. Ambrosia and other American users of sugar currently pay 8 cents per pound more for refined sugar than what Canadian food processors pay for sugar bought on the world market. The price differential has gone as high as 12 cents per pound over the past four years. American import duties only partialy offset Canadian manufacturers' lower sugar costs so even now Canadian-made chocolate products enjoy a raw material cost advantage over American competitors in the U.S. market.

Ratification of the FTA as it stands will unbalance the situation further because the continued sugar price differential along with the shrinking tariffs under the FTA will give Canadian chocolate products an even larger cost advantage not only in the Canadian but also in the American market. On the other hand, even removing the Canadian import duty on chocolate products will not make American chocolate products price competitive in the Canadian market due to higher sugar costs. So, in reality, Ambrosia's competitiveness will suffer once the FTA is implemented.

It should be noted that the FTA will also adversely affect business for Ambrosia's customers marketing sugar-containing products in direct competititon with Canadian manufacturers. As a result Ambrosia's business volume will be further reduced if our customers lose market share in the U.S. while being unable to price competitively to increase market share in Canada.

While Ambrosia favors competing in a more open market, we would like to do so on an even playing field. Ambrosia strongly feels that the FTA will favor Canadian sugar-containing products. To level the playing field, either the sugar price support system needs to be eliminated or higher tariffs need to be imposed on sugar-containing products entering the U.S.

WRITTEN TESTIMONY OF WHIRLPOOL CORPORATION

Whirlpool Corporation strongly favors enactment of the United States-Canada Free Trade Agreement (FTA) as written, without amendment.

Whirlpool Corporation is a leading manufacturer and marketer of major home appliances.

A most important provision in the FTA is the 10-year phase-out of certain tariffs. Part Two, Chapter Four, Article 401: Tariff Elimination, Paragraph 5 is adequate to consider acceleration of the elimination of a duty. No amending language is necessary to add a mechanism to obtain a concensus of affected industries. It is our assumption that affected industries in both the U.S. and Canada would be required to concur to any acceleration of duty elimination.

We reiterate the importance of the FTA's passage without amendment.

A phase-out of anytime less than 10 years for tariffs on major home appliances would be unreasonable and not economically or politically acceptable to Canadian appliance manufacturers. We recognize their potential economic dilemma, and endorse the 10-year phase-out of tariffs on major home appliances.

On other provisions: We agree with the premise of Chapter Six, Technical Standards, that product standards should not create obstacles to trade; we fully concur with the elimination or significant decrease in non-tariff barriers such as in Chapter 15, Temporary Entry for Business Purposes -- in Chapter 16, Investment -- in Chapter 17, Financial Services. Each of these provisions are vast improvements over current practices and will enhance economic progress for both the U.S. and Canada.

We are particularly pleased to understand the commitment by the House and Senate leadership, in the February 17, 1988 letter to the Secretary of the Treasury and the U.S. Trade Representative, that states that each House of the Congress will vote on the legislation without amendment.